12

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 99.

JAMES A. KINDER, TRUSTEE, PLAINTIFF IN ERROR,

vs.

EDWARD SCHARFF ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED SEPTEMBER 22, 1911.

(22,864)

(22,864)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 99.

JAMES A. KINDER, TRUSTEE, PLAINTIFF IN ERROR,

vs.

EDWARD SCHARFF ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print
Transcript from the district court for the Parish of Calcasieu, Louisiana	1	1
Petition	1	1
Act of sale from Cleopha Benoit *et ux.* to Edward Scharff, May 2, 1904	4	3
Exception of Edward Scharff for want of authority	8	6
Motion to have exception stand as answer	9	6
Amendment to exception of Edward Scharff	10	7
Motion to overrule exception of Edward Scharff	11	8
Plea of prescription by Edward Scharff	12	9
Answer of Edward Scharff	13	9
Motion for rule to show cause why depositions should not be used in evidence	15	11
Order for rule to show cause	16	12
Answer to rule to show cause	16	12
Exception of Edward Scharff of no right of action	18	13
Judgment	19	14
Appeal bond	21	15
Evidence	22	16
Testimony of George S. Taylor	22	16
Notes of evidence, &c.	32	23

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 2, 1913.

	Original.	Print
Interrogatories to Logan *et al*	264	170
Objections to interrogatories	269	172
Cross-interrogatories to Logan *et al*	270	173
Deposition of John L. Logan	272	174
James H. Logan	277	177
Commission to take depositions of Rugley *et al*., &c	280	179
Interrogatories to Rugley *et al*	284	181
Objections to interrogatories	288	185
Cross-interrogatories	289	185
Deposition of Jonathan E. Pierce	291	186
Deposition of Edgar P. Rugley	296	189
Exhibit A—Abstract Nos. 120, 121, and 391	300	192
Deposition of T. J. Poole	301	193
Commission to take deposition of Fisk	305	196
Deposition of Carl Fisk	305	196
Commission to take deposition of L. E. Ward	309	198
Deposition of L. E. Ward	310	200
D. P. Moore	315	203
Letter, L. Ward to E. Schardt, June 17, 1889	318	205
Clerk's certificate to transcript	318	205
Transcript of appeal filed	320	206
Cause continued (extract from minutes)	320	206
Cause continued (extract from minutes)	320	206
Cause continued with preference (extract from minutes)	321	207
Cause continued (extract from minutes)	321	207
Cause continued (extract from minutes)	321	207
Cause called, argued, and submitted (extract from minutes)	322	207
Certified copy of testimony of Edward Schardt as to value of land	322	208
Final judgment (extract from minutes)	324	209
Opinion of the court	324	209
Petition for rehearing	332	215
Rehearing refused (extract from minutes)	342	221
Petition for writ of error and assignment of errors	342	221
Order granting writ of error	343	222
Assignment of errors	343	222
Writ of error (copy)	344	223
Bond of appeal	346	224
Certificate of the clerk of the supreme court	348	225
Certificate of the chief justice of the supreme court	349	225
Certificate of the clerk as to the signature of the chief justice	350	226
Original writ of error	351	226
Certified copy of affidavit of Edward Schardt as to residence	353	227
Citation and service	354	228

unable to pay the balance due the rest of the creditors of the said bankrupt, as he has no other property to satisfy the balance due the said creditors.

Petitioner avers that at the time of the said fraudulent sale, that the said Cleopha Benoit had an equitable interest in the said land which was worth seven thousand dollars over and above the balance due for the purchase of the said land, and for that interest, the said Edward Scharff paid nothing, that his pretended assumption of the balance due on the said land, was nothing more than an attempt to cover up the said illegal and fraudulent sale, that the agreement had between the said Edward Scharff and the said Cleopha Benoit, at the time of, and previous to said fraudulent sale was that, inasmuch as the said Cleopha Benoit was hopelessly insolvent and would lose the said land, and as he, (Benoit) had already paid about $7,000 on the purchase price of the said land, that if he (Benoit) would transfer the property to the said Edward Scharff, that the said Edward Scharff would hold the land, and endeavor to sell same, and in the event of a sale before the remaining mortgage notes would become due, that the said Cleopha Benoit was to receive the amount he had paid on the land, and anything over and above this amount would be divided equally between the said Benoit and Scharff, but in the event that Scharff would deem it more profitable to hold the property, that he would advance the money to pay the balance due on the land, and when the land would be sold, that each would take the respective amounts they had paid and advanced on the land, and divide the surplus equally between them.

Petitioner avers that the said fraudulent sale as made, was for the sole purpose of defrauding the said Cleopha Benoit's creditors, and that the title was placed in the name of Edward Scharff, without any consideration being paid at the time of said sale, and that the title was placed in the name of Edward Scharff not for the purpose of a sale, but as first stated to defraud the creditors of the said Cleopha Benoit, and for the further purpose of securing the said Edward Scharff for any advances he might in the future have to make on the land, should he deem it more profitable to hold it, to pay the mortgage notes as they become due.

Petitioner avers that if anything at all, this form of securing the said Edward Scharff for the advances he might make in the future was not a sale, but a mortgage. Petitioner avers that he has only recently discovered that the above sale was a fraud upon the creditors of the bankrupt, and as soon as he so discovered, he had the case re-opened.

Wherefore, the premises considered, petitioner prays that the said Edward Scharff and Cleopha Benoit be duly cited to appear and answer this petition; and that after due proceedings had, that there be judgment in favor of your petitioner and against Edward Scharff and Cleopha Benoit, defendants herein, annulling and setting aside the sale made by the said Benoit to the said Scharff on the 2nd day of May, 1904, as having been made with the fraudulent purpose of defrauding the creditors of the said Cleopha Benoit, in contravention of the U. S. bankruptcy law of 1898, and that the said judgment decree the title to the said property to be

vested in your petitioner, as Trustee of the bankruptcy of the said Cleopha Benoit, ordering the cancellation of the deed to said lands, as described in the certified copy attached to this petition, from the records of Matagorda Co., Tex., decreeing same to be null, void and of no effect, and in the event that it is shown that the said Edward Scharff subsequently to the said fraudulent transfer, advanced the balance of the purchase price of said land, that if said advances amount to anything at all, that they be decreed to be nothing more than a mere mortgage, and not vesting any title in the said Edward Scharff.

He prays for all such orders and decrees that may be necessary in the premises, for costs.

And for full general and equitable relief.

(Signed) L. A. GOUDEAU,
Attorney for Petitioner.

STATE OF LOUISIANA,
Parish of Calcasieu:

Know all men by these presents:

That I, Cleopha Benoit, joined by my wife, Della Benoit, born Deronen, wife of Cleopha Benoit, of the parish of Calcasieu, in the State aforesaid, for and in consideration of the sum of Seven Thousand, Two Hundred (7,200.00) Dollars, to me paid and secured to be paid by Edward Scharff, the receipt of which is hereby acknowledged as follows:

The said Edward Scharff, assume and agree to pay as a balance of said purchase price the following vendor lien notes as follows, to wit: Four notes of fourteen hundred dollars executed by L. E. Ward, to Joseph Gerst, and due respectively, November 21st, 1903, 1904, 1905 and 1906, and one note for $500.00 executed by Cleopha Benoit favor of L. E. Ward, and due November 21st, 1903, the said vendee assumes the interest on all said notes from this date.

5 have granted, sold and conveyed and by these presents do grant, sell and convey, unto the said Edward Scharff, of the parish of Calcasieu, State of Louisiana, all that certain tracts of land, or parcels of land, lying and being in the County of Matagorda, State of Texas, and being composed of three original surveys, more particularly described as follows, to wit:

First Tract—Three hundred and twenty acres originally granted to Andrew Scott, and described by Field Notes as follows, to wit: Beginning at a Live Oak tree marked "T" (on the west margin of the east fork of the Caranchua, from which a live oak twelve inches in diameter marked "X" bears S.68 E. 1 1-2 varas and a Pin Oak tree in diameter marked "X" bears N.81 30 E.4 varas. Thence N.40 W.2434 varas to a stake in the prairie, thence N.50 E.672 varas to stake in prairie, thence S.40 E.2584 varas to forked ash tree marked "A" on west margin of the East Caranchua from which a live oak tree twenty-four inches in diameter marked "X" bears N.76 30 W.1 vara, thence down said stream with its meanders to the place of beginning, containing three hundred and twenty acres more or less.

Second Tract—Six hundred and forty acres, originally granted to the heirs of Ebenezer Bean, and described by Field Notes as follows, beginning at a stake on the west margin of the east fork of the Caranchua from which a pin oak marked "V" eight inches in diameter bears N.58 E.2 varas and another pin oak eight inches in diameter marked "X" bears S.58 W.2 varas, then N.10 W.3592 varas to a stake in prairie, thence S.50 W.950 varas to a stake in prairie, thence S.10 E.3942 varas to forked ash marked V from which a live oak two feet in diameter marked "H" bears N.10 W.12 varas, thence up said stream with its meanders to place of beginning containing six hundred and forty acres more or less.

Third Tract—Six hundred and forty acres originally granted to the heirs of Ebenezer Bean, and described by Field Notes as follows, beginning at a leaning double live oak tree marked "X" on
6 the west margin of the East Caranchua, from which a pin oak tree eight inches in diameter marked "X" bears N.17 W.10 varas, and a peach four inches in diameter marked "X" bears N.2930 E.12 varas, thence N.10 W.3131 varas to a stake in prairie, thence S.50 W.950 varas to a stake and mound, thence S.10 E.3011 varas to a stake on west margin of said stream from which a pin oak eight inches in diameter marked "X" bears S.58 W.2 varas, thence up said stream with its meanders to place of beginning, containing six hundred and forty acres of land more or less.

To have and to hold, the above described premises, together with all and sigular the rights and appurtenances thereto in anywise belonging, unto the said Edward Scharff, heirs and assigns forever. And I do hereby bind myself, and my heirs, executors and administrators, to warrant and forever defend, all and singular the said premises unto the said Edward Scharff, his heirs and assigns against every person whatsoever lawfully claiming or to claim the same or any part thereof.

Witness our hands at Welsh, Louisiana, this 2nd day of May A. D. 1904.

his
CLEOPHA x BENOIT
mark.
his
DELIA x BENOIT.
mark.
EDWARD SCHARFF

Witnesses at the request of Grantor
J. H. LABIT.
W. W. WELSH.

STATE OF LOUISIANA.
Parish of Calcasieu:

Before me, Charles P. Martin, Notary Public, in and for the parish of Calcasieu, State of Louisiana, on this day personally appeared Cleopha Benoit, known to me to be the person whose name is sub-

rified to the foregoing instrument, and acknowledged to me that executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 2nd day of May, A. D. 1904.

[L. S.] CHAS. P. MARTIN,
Notary Public, Calcasieu Parish, Louisiana.

TATE OF LOUISIANA.
Parish of Calcasieu

Before me, Charles P. Martin, a notary public, in and for the arish of Calcasieu, in the State of Louisiana, on this day personally peared Delia Benoit, wife of Cleophe Benoit, known to me to be person whose name is subscribed to the foregoing instrument, d having been examined by me privily and apart from her hus- nd, and having the same fully explained to her, she, the said elia Benoit, acknowledged such instrument to be her act and deed, d declared that she had willingly signed the same for the purposes d consideration therein expressed, and that she did not wish to ract it.

Given under my hand and seal of office, this 2nd day of May, D. 1904.

[L. S.] CHAS. P. MARTIN,
Notary Public, Calcasieu Parish, Louisiana.

Filed for Record at 2 o'clock P. M. May 5 A. D. 1904. Recorded 6 o'clock P. M. May 21st A. D. 1904. Geo. Austin, Clk. Co. Ct. Co. Tex. By Geo. E. Scrill, Deputy.

E STATE OF TEXAS,
County of Matagorda

I, Geo. Austin, Clerk of the County Court in and for Matagorda ounty, Texas, hereby certify that the above and foregoing two ges contain a true and correct copy of Deed from Cleophe Benoit d wife Delia Benoit to Edward Scharff as the same appears of ord in my office in Book 13 pages 537-539 Deed Records of Ma- gorda County, Texas.

Given under my hand and seal of said County Court, at office in Bay City, this 13th day of October, 1908.

[SEAL.] GEO. AUSTIN,
Clerk County Court, Matagorda County, Texas.
By J. K. BROTHERSON, *Deputy.*

Filed Jan. 7th, 1909. M. D. Andrus, D'y Clerk. Filed in evi- ence 5-3, 1910, in suit No. 7525 and marked "P. 5." (Signed) ugene J. Leveque, D'y Clerk.

Your mover alleges, for he so believes, that this exception was filed only for delay, and as this cause has been pending before your Honorable Court since January 7, 1909, that the case should be tried and disposed of on its merits, for if the facts alleged by mover are true, and he asserts that they are, the creditors have been kept out of their just dues too long already.

Mover avers that there is no merits to the defendant's exception and it should be ordered to stand as an answer, and the case tried on its merits.

Wherefore, the premises considered, mover prays that defendant Edward Scharff's exception of want of authority filed herein on the 7th day of March 1910 be ordered by the court to stand as an answer and that in due course there be judgment as originally prayed for by plaintiff. For all such orders and decrees as may be necessary in the premises, for costs. And for full general and equitable relief.

(Signed) L. A. GOUDEAU,
Atty for Plaintiff & Mover.

Filed Mar. 14, 1910. J. W. Gardiner, Clerk.

15th Judicial Dist. Court, State of Louisiana, Parish of Calcasieu.

#7525.

JAMES V. KINSEL, Trustee,
vs.
EDWARD SCHARFF ET AL.

To the Hon. W. F. Schwing, Judge ad hoc.

Now come Edward Scharff, one of the defendants in the above numbered and entitled cause, and with respect shows:

That he is desirous of amending and amplifying the exception of want of authority heretofore filed, by adding thereto the following:

"Defendant further shows that none of the formalities required for the legal appointment and qualification of a trustee have been complied with in the pretended appointment of plaintiff herein; particularly the formalities required by Section 58 of the Bankruptcy Act of 1898 were not complied with prior to plaintiff's pretended appointment and qualification as such.

"That no creditor of Cleopha Benoit, bankrupt, appeared either in person or through a duly executed power of attorney as required by law to participate in any pretended meeting of creditors to select a trustee after said bankruptcy was reopened."

Wherefore, premises considered, appearer prays that this amendment to the exception of want of authority be ordered filed; that the prayer of the original exception that plaintiff's demand be dismissed be granted as prayed for and according to law; for all necessary orders and decrees, and for full, general and equitable relief.

By His Attorneys, McCOY, MOSS & KNOX.

Filed Mar. 17 1910. J. W. Gardiner, Clerk.

In the District Court of the Parish of Calcasieu, State of Louisiana.

=7525

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHWEGE et al.

To the Honorable W. F. Schwing, Judge ad hoc:

Now into Court, through his undersigned counsel, comes James A. Kinder, Trustee, and with respect represents:

That upon the face of the papers, the Exception on Want of Authority filed herein on the 7th day of March 1910, and the Supplement to said Exception, filed herein on the 17th day of March 1910 by the defendant Edward Schegé, it conclusively appears that said exception and supplement cannot be considered by this Court in this action, for this, to-wit:

Because your appearer is proceeding in this matter as Trustee duly appointed by the Honorable George S. Taylor, the regularly appointed and qualified Referee in Bankruptcy acting in and for the Parish of Calcasieu, Louisiana, and in prosecuting this suit upon the authority and orders of the said George S. Taylor, Referee.

Because this Bankruptcy is under the jurisdiction of the Referee in Bankruptcy acting in and for the parish of Calcasieu, Louisiana, and that the said George S. Taylor being the Referee in and for the parish Calcasieu, Louisiana, has jurisdiction of said Bankruptcy, that under the law, the Honorable George S. Taylor, had the right and authority to render judgment appointing your appearer Trustee herein, and that the questions sought to be inquired into by the said exception of want of authority were questions which the Honorable George S. Taylor, Referee alone had the right or power to decide, subject only to an appeal to the Judge of the District Court of the United States, in and for the Western District of Louisiana, and which your Honor cannot question in the collateral
12 manner.

The Court appointing your appearer Trustee herein had jurisdiction of these Bankruptcy proceedings, and so finding, the truth of the record in other respects must be assumed by this Court, and is not subject to be collaterally attacked.

Wherefore, the premises considered, appearer prays that the exception of want of authority filed herein be overruled, and that there be judgment as originally prayed for, and for full general and equitable relief.

(Signed) L. A. GOUDEAU,
Attorney for Appearer & Plaintiff.

Filed Mar. 21, 1910. M. D. Vadner, Dy. Clerk.

15th Judicial District Court, State of Louisiana, Parish of Calcasieu.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

To the Honorable William F. Schwing, Judge ad hoc:

Now comes Edward Scharff, one of the defendants in the above numbered and entitled cause, and, reserving the benefit of the exceptions heretofore filed and overruled, and appearing for the purposes of this exception only, alleges that the cause of action declared upon in plaintiff's petition is prescribed and barred by the Statute of Limitation of two years, as provided by paragraph "d" of section 11 of the Bankruptcy Act of 1898 of the United States of America, that J. A. Kinder, the Trustee, was discharged from his trust as Trustee, his final account approved and said bankrupt's estate closed on June 28th, 1905; that he knew defendant had acquired this property prior to the filing of his final account or to the judgment discharging him of his trust and that there was no effort on the part of defendant to conceal from plaintiff or any one else, the real facts of said transaction, and plaintiff could easily have ascertained them prior to closing the estate on June 28th, 1905. That a period of more than two years elapsed from that time prior to the institution of this suit and that, therefore, any right of action which ever existed in the Trustee of the bankrupt estate of Cleophe Benoit, No. 187, is barred by said Statute of Limitation or prescription.

Wherefore, premises considered, appearer prays that this plea of prescription and bar by Statute of Limitation be maintained and plaintiff's suit dismissed, at his costs, for all necessary orders and decrees, and for full, general and equitable relief.

By McCOY, MOSS & KNOX,
Attorneys for Edward Scharff.

Filed March 28th, 1910. Eugene J. Leveque, D'y Clerk.

15th Judicial District Court, State of Louisiana, Parish of Calcasieu.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

To the Honorable William F. Schwing, Judge ad hoc:

Now comes Edward Scharff, one of the defendants in the above numbered and entitled cause, and, reserving the benefit of the ex-

ceptions heretofore filed and overruled, and also the plea of prescription of two years referred to the merits over defendant's exception, and in answer to plaintiff's petition, denies generally and specially each and every allegation thereof except such as may be hereinafter specially admitted.

Appearer alleges that he did a few days prior to the 2nd day of May, 1904, purchase from Cleophe Benoit, J. H. Labit and E. C. Labit, its then owners, a certain tract of land located in the County of Matagorda, State of Texas; that said transaction was represented by two certain deeds or acts of conveyance, that from Cleophe

14 Benoit to your appearer, a certified copy of which is annexed to plaintiff's petition, being only one of them, all of which will be duly shown upon the trial hereof.

Defendant specially denies each and every allegation contained in plaintiff's petition and alleges on the contrary that he purchased said property in good faith and either paid in cash or assumed valid and existing mortgages upon said property, at more than two months standing, amounting to the full valuation thereof, at the time he acquired the same, and is now and has been ever since the 2nd day of May, 1904, the true, lawful and exclusive owner of said property, and especially denies that Cleophe Benoit or anyone else has ever had any right, title or interest in said property or any portion thereof since said 2nd day of May, 1904.

Defendant alleges in the alternative that in the event the plaintiff should recover title to said property, and in that event only, appearer is entitled to recover by way of reconventional demand a lien and privilege upon said property for the sum of Eight thousand seventy three and 92 100 Dollars, with ten per cent per annum interest thereon from and after May 2nd, 1904, until paid, in repayment of the sum actually paid by him to acquire and preserving said property which sum must be paid prior to the vesting of title to same by your appearer herein.

Wherefore, premises considered, appearer prays that plaintiff's demand be rejected, and your appearer declared to be the true and lawful and exclusive owner of said property and plaintiff be cast for all of the costs of this suit, or, in the alternative that in the event plaintiff should be decreed to be the owner of said property that defendant be decreed to be entitled to recover the sum of Eight thousand seventy three and 92 100 Dollars with ten per cent per annum interest from May 2nd 1904, until paid, and said sum be ordered paid your appearer before he can be required to pass title to said property, for all necessary order and decree and for full, general and equitable relief.

15 By His Attorneys, McCOY, MOSS & KNOX.

Filed Mar. 31st 1910. M. D. Andrus, Dy Clerk.

15th Judicial District Court, State of Louisiana, Parish of Calcasieu.

No. 7525.

JAMES A. KINDER, Trustee
vs.
EDWARD SCHARFF et al.

To the Honorable William F. Schwing, Judge ad hoc:

Now comes Edward Scharff, one of the defendants in the above numbered and entitled cause, and with respect represents:

That he has caused the deposition of Carl Fisk to be taken before L. B. Brooks, notary public in and for Wharton County, Texas, on the 29th day of April, 1910, which was returned and filed in the office of the Clerk of this Honorable Court on the 28th day of April, 1910;

That he has caused the deposition of L. E. Ward to be taken before John S. Rowlett, notary public of Jackson County, Texas, on the 25th day of April, 1910, which said commission was duly returned to the office of the Clerk of your Honorable Court on the 27th day of April, A. D. 1910;

Petitioner further represents that he caused the deposition of L. F. Pierce to be taken before W. C. Carpenter, notary public of Matagorda County, Texas, on the 30th day of April, 1910, which was returned to the office of the Clerk of your Honorable Court on the 2nd day of May, 1910;

That he has caused the deposition of Edgar Rugeley and T. J. Eade to be taken before W. J. Wilson, notary public of Matagorda County, Texas, on the 29th day of April, 1910, which commissions were returned to the office of the clerk of your Honorable Court on the 2nd day of May, 1910;

That he caused the deposition of J. L. and J. H. Logan to be taken before W. C. Carpenter, notary public, on the 29th day of April, 1910, and same was returned and filed in the office of the Clerk of your Honorable Court on the 2nd day of May, 1910.

That in taking all of the above depositions the various notaries public were acting under authority of a commission issued out of your Honorable Court and the depositions were taken upon interrogatories and cross-interrogatories annexed to said commissions and your appearer is entitled to have same introduced and received in evidence upon the trial of said cause.

Wherefore premises considered, your appearer prays that the plaintiff be cited to show cause, if any he have, within such time as may be fixed by your Honorable Court, why the depositions herein described should not be received in evidence upon the trial hereof; for all necessary orders and decrees, and for full and general relief.

By His Attorneys, McCOY, MOSS & KNOX.

Order.

Foregoing premises considered, it is hereby ordered that ... plaintiff show cause on or before nine o'clock A. M., on May ... 1910 why the depositions described in the foregoing applicat... should not be received in evidence upon the trial of the cause.

Done and granted at Chambers, at the City of Lake Charle... Louisiana, on this the 2nd day of May, A. D. 1910.

(Signed) WM. F. SCHWING,
District Judge.

Filed May 3, 1910. M. D. Andrus, Dy Clerk.

In the Fifteenth Judicial District Court, Calcasieu Parish, Louisiana

7525.

James A. Kinder, Trustee,
vs.
Edward Schuell et als.

Now into Court, through his undersigned counsel, comes Jas. A. Kinder, Trustee, plaintiff herein, and in answer to the rule
17 filed herein ordering him to show cause why the depositions of Edward Rugely, T. J. Poole, J. L. & J. H. Logan and L. E. Pierce should not be used in evidence herein, answers as follows:

1st. He sees all of the Cross-Interrogatories of the ... not answered by the said witnesses.

2nd. Because the said testimony is irrelevant and immaterial to the issues involved in this cause, and is mostly opinion testimony, all of which unnecessarily encumbers the record.

3rd. Because plaintiff was not represented by counsel at the taking of these depositions, and was not notified that the defendant would cause the depositions to be taken by counsel previously employed by him in securing this evidence.

Respondent avers that the legal firm of Carpenter & Wilson, composed of W. C. Carpenter and W. D. Wilson, who as notaries, took the depositions sought to be read herein, had been previously employed by the said Edward Schuell to assist him in securing this same evidence, that they were his attorneys, and as such were representing the said Edward Schuell when the depositions were taken, and that it was an unjust, unfair and illegal advantage taken of your respondent, who had no information that such was the case, until the depositions were returned, and he ascertained the name of the parties before whom the depositions were taken.

Respondent avers that it was only yesterday, May 2, 1910 that he ascertained that W. C. Carpenter and W. D. Wilson, Schuell's attorneys had acted as notaries in taking these depositions.

Respondent avers that the depositions of L. E. Ward & Carl

Fisk should be refused and rejected as evidence herein, for the reasons assigned in reasons #1 and 2 as above set forth.

Respondent again urges his objections to the admissibility of the evidence originally urged by him before cross-examining the said witnesses.

Wherefore, the premises considered, respondent prays that for the reasons above stated that the depositions of Edgar Rogely, T. J. Poole, J. L. and John H. Logan, J. E. Pierce, L. E. Ward and Carl Fisk, be rejected and refused as evidence on the trial of this case.

For all such orders and decrees as may be necessary in the premises, for costs and for full general and equitable relief.

L. A. GOUDEAU,
Atty for Trustee.

Affidavit.

Before me, the undersigned authority, personally came and appeared L. A. Goudeau, who after having been personally sworn by me, deposes and says:

That all of the facts above alleged are true and correct, to the best of his information and belief.

(Signed) L. A. GOUDEAU.

Sworn to and subscribed before me, this third day of May, 1910 at Lake Charles, La.

(Signed) PAUL J. BARRE,
Notary Public. [SEAL.]

Filed 5-3, 1910. M. D. Andrus, Deputy Clerk.

15th Judicial District Court, State of Louisiana, Parish of Calcasieu.

#7525.

Jyrus A. Keator, Trustee,
vs.
Edward Scharff et al.

To the Honorable William F. Schwing, Judge ad hoc.

Now comes Edward Scharff, one of the defendants in the above numbered and entitled cause, and urges that the plaintiff is without right of action to prosecute this suit at this time for the following reasons, to-wit:

First. That the trustee in bankruptcy nor any other representative of a party who has been promised a donation has a right of action to recover a promised donation or manual gift, nor has a promised donee any right of action therefor.

Second. That the land in question not having been sold or disposed of, the period of time when defendant Scharff was to

make a donation or manual gift — and he is not under any
obligation to make said donation or manual gift prior to the
of the land in question, nor is he under any legal obligation
so at any time.

Wherefore premises considered, appearer prays that this
tion of no right of action be maintained; for all necessary
decrees and for full and general relief.

By His Attorneys, McCOY, MOSS & KNO

Filed May 5th, 1910. Eugene J. Leveque, Dy Clerk.

In the Fifteenth Judicial District Court, Calcasieu Parish, Louis

#7325.

JAMES A. KINDER, Trustee
vs.
EDWARD SCHARFF et als.

This cause, after having been previously set for trial, was
to be heard on the 3rd day of May, 1910, the plaintiff being pre
and represented by his counsel, I. A. Goodwin, as also the defend
Edward Scharff, represented by his counsel McCoy, Moss
the defendant Cleophe Benoit being present but not represented
counsel.

When, after hearing the pleadings, the evidence
ments of counsel for both the plaintiff and the defendant Edw
Scharff, the Court considering the law and the evidence to be
favor of the plaintiff, James A. Kinder, Trustee, and against
defendants Edward Scharff and Cleophe Benoit, and
avoid pretended, overruled the plea of prescription
right of action, and ruling on the merits,

It is ordered, adjudged and decreed, that there be judgment
favor of the plaintiff James A. Kinder, Trustee, and against
the defendants Edward Scharff and Cleophe Benoit, annu
ing and declaring null, void, as having been done in
travention of the Bankruptcy Act of the United States of the
1898, the deed executed on the 2nd day of May 1904 by the
Cleophe Benoit to the said Edward Scharff, to the property own
by the said Cleophe Benoit in the County of Mo
of Texas, containing 1600 acres of land more or less, and descri
as follows, to-wit:

1st Tract: Three hundred and twenty acres
to Andrew Scott, and situated on the West margin of the East F
of the Carancahua Creek, and more fully described by field no
attached to plaintiff's petition.

2nd Tract: Six hundred and forty acres originally
to the heirs of Ebenezer Bean, and situated on the West margin
the East fork of the Carancahua Creek and more fully described

and notes attached to plaintiff's petition, and adjoining the first tract.

2nd Tract—Six hundred and forty acres originally granted to the heirs of Ebenezer Bean, and situated on the West margin of the Left fork of the Carmelina Creek, adjoining the 2nd Tract above described, and more fully described by field notes attached to plaintiff's petition.

All of the above lands having been acquired by the said Cleophe Benoit from L. E. Ward on the — day of — 190—.

It is further ordered, adjudged and decreed, that the said Edward Scharff do, and he is hereby ordered and commanded to execute a quit claim deed reconveying said property to the plaintiff herein, James A. Kinder, Trustee of the Bankrupt estate of Cleophe Benoit.

It is further ordered, adjudged and decreed, that the said Edward Scharff is hereby referred to the Bankruptcy Court for any rights which he may have by reason of any payments or advances he may have made on this land or which enured to the benefit of the Bankrupt estate of Cleophe Benoit, such rights, if any he has, to be determined by the said Bankruptcy Court of the United States.

Judgment rendered in Chambers and in presence of all the parties on the 5th day of May 1910.

Judgment read aloud and signed in open Court at Lake Charles, Louisiana, on this 12th day of May, 1910.

(Signed) WM. F. SCHWING,
Judge ad hoc

Filed May 12th 1910. M. D. Andrus, Deputy Clerk.

Appeal Bond.

STATE OF LOUISIANA,
Parish of Calcasieu:

Know all men by these presents:

That we, Edward Scharff, as principal and L. Kaufman as surety are held and firmly bound unto James W. Gardiner Clerk of Court in and for Calcasieu Parish, Louisiana, and to his successors in office in the sum of Two Hundred Fifty and no 100 Dollars, and for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Dated the 12th day of May, A. D. Nineteen Hundred and Ten (1910).

Whereas, The above bounden Edward Scharff has asked for and obtained a suspensive appeal from a certain final judgment rendered against him in this District Court in and for the parish of Calcasieu, in favor of James A. Kinder, Trustee in suit number 7525 on the Docket of said Court, entitled James A. Kinder, Trustee vs. Edward Scharff et al.

Now, Therefore, the condition of the above obligation is such that if the said Edward Scharff shall prosecute this suspensive appeal,

and shall satisfy whatever judgment may be rendered against h
or if the same shall be satisfied by the proceeds of the sale of
estate, real and personal, if he be cast in the appeal, th
22 and in that case the above obligation to be void and n
otherwise the said surety shall be liable in his place.
(Signed) EDWARD SCHARFF
L. KAUFMAN.

Filed May 13th 1910. M. E. Crawford, D'y Clerk.

15th Judicial District Court, State of Louisiana, Parish of Calcas

#7525.

JAMES A. KINDER, Trustee
vs.
EDWARD SCHARFF et al.

LAKE CHARLES, LOUISIANA, March 21, 1910.

Appearances:

L. A. Goudeau, Esq., for Plaintiff.
McCoy, Moss & Knox (through C. A. McCoy, Esq.) for defend
ant, Edward Scharff.
Hon. W. F. Schwing, Judge ad hoc.

Testimony taken in Chambers, by consent of all parties, upon th
exception filed on behalf of defendant Edward Scharff on Marc
7th, 1910, and this supplemental exception of want of authority
filed March 17th, 1910, and also upon the motion of plaintiff t
have the exception of want of authority overruled, filed Marc
21st, 1910, said evidence to have all the force and validity as
taken in open court.

GEORGE S. TAYLOR, having been sworn by the Judge ad hoc
testified as follows:

Direct examination,

By Mr. McCoy:

Q. Mr. Taylor, are you the same George S. Taylor who was ap
pointed Referee in Bankruptcy for the Lake Charles Division of th
United States District Court dated February 19th, 1906?
23 A. Yes, sir.
Q. Mr. Taylor was there ever received by you, either by
mail or by service through a deputy Clerk or Deputy Marshal of
this District, a copy of the order referring the bankruptcy of Choate
Benoit, No. 187, to you?

Mr. GOUDEAU: That is objected to for the reason that it is irrele
vant and immaterial as by the previous answer of this witness it

is shown that he was the duly appointed Referee for the Lake Charles Division including the parish of Calcasieu, and as such he had jurisdiction of the bankruptcy proceedings, and any formality or informality required for the appointment of a trustee in bankruptcy could only be passed upon and considered by Mr. Taylor as Referee himself, and that this is an attempt to collaterally attack the order or judgment of Mr. Taylor as Referee appointing James A Kinder Trustee in this case, and that such orders cannot be attacked collaterally in this case.

By the Court: The exception is overruled; the court must necessarily have some information as to these proceedings, whether they were referred to Calcasieu Parish, or to any Referee, and if so, to what one.

Mr. Goldman: We want to except further to any answer by the witness except that called for by the Court, that is as to whether or not he was the proper referee.

The Court: The Court not having called for any answer from the witness, the exception is overruled and the attorneys directed to go ahead with the case; that there is no question before the Court to pass upon.

The question is repeated to witness.

Counsel for plaintiff excepts to the ruling of the Court.

A. No; I never received any written order of reference.

Q. Mr. Taylor, the document which I now hand you, marked "D 10" is a certified copy of the original order of reference of this bankruptcy which it was first filed in either May or June 24 1901, is your father, Thomas F. Taylor, is it not?

A. Yes, sir, that is a certified copy of the original order of reference in the Judge's absence.

Q. Mr. Taylor that is the same form of reference which is used in referring bankruptcies to the Referee which it may be desired for action, is it not?

By Mr. Goldman: That is objected to for the reason that The Bankruptcy Act itself does not require a written reference, that the Judge might refer the case and order it proceeded with upon verbal instructions; that the order of the Judge appointing Mr. Taylor as Referee states that all bankruptcy cases arising in the United States District Court for the Parishes in the Lake Charles and Opelousas groups of parishes shall be referred to him by the clerk of the United States District Court, and that would be sufficient for his authority to act therein.

The Court: The objection is overruled.

Counsel for plaintiff excepts to the ruling of the Court.

A. Yes, sir, that is the same form that is used in all cases.

Mr. McCoy: I will now offer in evidence this document marked "D 10" with leave to substitute a certified copy.

Q. Mr. Taylor, at what time did you mail the notices to the various creditors for the meeting of creditors to be held on Decem

ber 29th, 1909, at which Mr. Kinder alleges to have been elected Trustee?

Mr. Goudeau: That is objected to for the reasons previously urged,—that it is a collateral attack upon the order of Mr. Taylor appointing Mr. Kinder as trustee, and this *this* cannot be done in this court nor in this proceeding.

The Court. The Court sustains the objection in so far as the collateral attack is concerned, the question as to whether the formalities were complied with are not to be passed upon by this Court, but the question as to whether George S. Taylor had authority or not.

Counsel for defendant Scharff excepts to the ruling of the Court.

Q. Mr. Taylor, the only publication of the notice to creditors of the meeting which was held by you on December 29th, 1908, were the notices appearing in the Lake Charles Daily Press-Leader of December 26th, and December 28th, 1908, are they not?

Mr. Goudeau: I urge the same objection, and that is objected to for the further reason that it is assuming a fact not proven.

The Court. The objection is sustained; but the evidence will be admitted for the benefit of the upper Court, and for the purpose of completing the record.

Counsel for defendant excepts to the ruling of the Court in so far as the same is against him.

Counsel for plaintiff excepts to the ruling of the Court in so far as it is against him.

A. I find in the Lake Charles Press-Leader, December 26th, 1908, a publication of the notice to creditors in the bankruptcy of Benoit. This appears to be the first publication.

By the Court. To meet when?

Witness. To meet on the 29th day of December, 1908, at 9 o'clock in the forenoon. This appears to be the first publication of the notice after December 17th, the date that the notices were issued.

Mr. Goudeau. I want to urge a further objection at this stage that this party is without right to question the appointment of the Trustee or to question the giving of the notices as he was not a creditor of the bankruptcy of Cleophe Benoit, and that this notice is required to be given to creditors, and he is therefore without right or interest in the matter as to the question of notice.

The Court. The same ruling; this is a question as to the legality of the appointment of a Trustee, but the evidence is allowed in for the benefit of the upper Court.

Counsel for Plaintiff excepts to the ruling of the Court in so far as it is against him.

Counsel for defendant excepts to the ruling of the Court in so far as the same is against him.

Witness: The second publication of the above mentioned notice was on Monday, December 28th, 1908.

Mr. McCoy: Those were the only two notices that were published prior to the meeting of the creditors?

A. As far as I know, yes, sir.

Q. You didn't answer the first question, so I ask it over. Mr. Taylor, what date was the notices mailed out to the various creditors of Cleophia Benoit of the meeting to be held on December 29th 1908, at which Mr. Kinsler claims to have been elected Trustee?

The Court: This evidence is admitted by the Court under the ruling above given, which ruling and exceptions are to apply to all questions relating to the appointment of the Trustee. Counsel for plaintiff excepts to the ruling of the court in so far as it is against him.

Counsel for defendant Scharff excepts to the ruling of the Court in so far as the same is against him.

Witness: Such notices to creditors as these are not registered, and therefore I could not tell you positively the date of mailing them, but it is the custom in the office to mail them the same day they are written. I do in every other case and I do not see why it should not be done in this.

Q. None of them were mailed earlier than the 17th of December, 1908?

A. No, Sir. I don't think they were, because they were not written until the 17th.

Q. Mr. Taylor, a number of creditors appearing on Mr. Benoit's schedule reside at such a distance from Lake Charles that in the due course of mail they could not have received the notices so as to give them ten clear days from the date that they received the notices prior to the 29th of December, 1908, — is that not so?

A. I don't suppose they could. I don't know anything about that. I don't even remember the residences of the different creditors.

Witness on referring to the schedule filed by the bankrupt continues:

Witness: Yes, sir, there is quite a number of them that live so far away from here that they would not have had ten clear days. There are some over in San Francisco, California; some in Mansfield, Ohio; some in Bedford City, Virginia, and in other States.

By the Court: Were there any of those who could not have been notified so as to give them ten clear days which live in this District?

A. No, Sir.

By Mr. McCoy: I notice in examining the votes of the creditors at that meeting, that a number of creditors voted for Mr. Kinsler as Trustee, through Mr. L. A. Goudeau, as their attorney. Did Mr. Goudeau exhibit to you powers of attorney for the various creditors whom he represented in the form as required by form No. 30 or form No. 21 of the bankruptcy forms adopted by the United States Supreme Court?

A. No, Sir, he did not; — there might have been a few, but I

admitting the testimony to go in for the purpose of completing the record.

WITNESS: The matter was sent to me through the mail by the Deputy Clerk, E. C. Jackson, the Clerk, Walter Jackson, having died on the 26th day of February, 1908. The order of the Judge re-opening the case struck me as a little vague, he said "Let orders issue." On the 21st of December, 1908, when he came here to hold Court, I took the petition and went around to the Hotel and saw him, and I asked him who the party was to issue this order to re-open the case and showed him his order; he said "Why you are, go ahead and re-open the case and appoint the attorney." I went back to my office and wrote the order which you see there on that petition under those instructions. At that session of the Court, I will state that the Judge had no clerk; that he acted as his own Clerk.

Mr. GOLDEN: The Judge had no Clerk at that time?

A. That is my recollection, and acted as his own Clerk.

Q. When you referred to the Judge and the Judge who gave you these instructions, you referred to Judge Aleck Boarman, who was Judge of the United States District Court at that time?

A. Yes, sir.

Q. It was after you received these instructions, then you noted your order there?

Mr. McCOY: We object to that because it has already been testified to by this witness and is unnecessarily encumbering the record.

The objection was sustained by the Court.

Counsel for plaintiff excepts to the ruling of the Court.

Q. Now, Mr. Taylor, without in any manner waiving or abandoning our objections to the admissibility of the testimony tending to collaterally attack the appointment of James A. Kinder as trustee, and with full reservation of our right under our previous objections, plaintiff asks the following questions: Mr. Taylor, can you state when the order for the publication of the notice to the creditors was issued by you by reference to the published notice in this paper?

(Witness on referring to paper answers:)

A. Why it was issued on the 17th day of December, 1908.

Q. Can you say if you ordered the notice to be published more than once?

A. No, Sir, I only ordered them published once.

Q. Have any of the notices which you sent to the creditors ever been returned to you?

A. No, Sir, not to my knowledge.

Q. Have any of the creditors as they appear upon the schedule filed in the bankruptcy proceedings made any complaints to you as to the legality or illegality of the appointment of James A. Kinder as Trustee in this matter?

A. No, sir.

Mr. GOUDEAU: With full reservation of our exceptions urged to the attacking of the appointment of James A. Kinder as trustee in this case, and without in any way abandoning same, plaintiff offers in evidence the order of George S. Taylor, Referee, dated at Lake Charles, Louisiana, on the 29th day of December, 1905, appointing James A. Kinder as Trustee of the bankruptcy of Cloughs [illegible] No. 187 on the docket of the District Court of the United [illegible] marked "P 11" with leave to substitute certified copy.

31 And with the same reservation, plaintiff offers in evidence the bond of J. A. Kinder, marked "P 12" with leave to substitute certified copy.

Q. Mr. Taylor, can you say whether or not you administered the oath to Mr. Kinder when he qualified for office?

By Mr. McCoy: This is objected to for the reason that a bankruptcy court, being a court of record, its proceedings can only be shown by the record of same, and parole evidence to show same is inadmissible.

The objection is overruled by the Court.

Counsel for defendant excepts to the ruling of the Court.

A. Yes, sir, I did.

Mr. GOUDEAU: Now with full reservation of our exceptions as to the collateral attack made in this case, plaintiff offers in evidence the petition of James A. Kinder, Trustee, for authority to file this suit and the order thereon, marked "P 13" with leave to substitute certified copy.

By the COURT: Mr. Taylor, was this petition to re-open the Berger bankruptcy filed with you?

A. Yes, sir.

Q. By whom was it sent to Judge Boarman?

A. By me.

Q. To whom was it returned?

A. To me.

Q. How, personally or through the mail?

A. Through the mail.

Redirect examination.

By Mr. McCoy:

Q. Mr. Taylor, when that petition of Mr. Kinder's was filed with you, did you mail it to Judge Boarman, or to the clerk of Court?

A. I mailed it to the Clerk of Court; that is where everything goes.

32 Q. When it was returned to you, it was returned by the Clerk?

A. Yes, sir.

Q. There was no certified copy of an order of reference with it?

A. No sir.

Q. Was there any order of reference other than that which is on the back of it?

A: That is all.

Mr. McCoy: We next offer in evidence the certified copy of the order approving the final account of Mr. Kinder as Trustee of the bankruptcy of Cleopha Benoit, under date of June 28th, 1905, marked "D 11."

We next offer in evidence a certified copy of Mr. Benoit's discharge under date of November 18th, 1905, marked "D 12."

Mr. Gouedan: That is objected to on the ground that it is irrelevant and immaterial, having no bearing on the issues in this case.

The Court: The Court overrules the objection and admits them for what they are worth.

Counsel for plaintiff excepts to the ruling of the Court in so far as it is against him.

I hereby certify that the above and foregoing ten pages contain a true and correct transcript of the stenographic notes taken by me at the hearing of said cause on the date appearing on the first page hereof.

(Signed) W. H. WILCOX.
Stenographer

Filed March 24th, 1910. M. E. Crawford, Dy Clerk.

Fifteenth Judicial District Court, State of Louisiana, Parish of Calcasieu.

#7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Notes of Evidence and Testimony Taken on the Trial of This Case on the 3rd and 4th days of May, A. D. 1910, His Honor, W. F. Schoving, Judge ad hoc, Presiding.

Appearances:

Goudeau & Barbe for plaintiff.
McCoy, Moss & Knox, for defendant Edward Scharff.

By Mr. Gouedan: for the purpose of the trial of this case, plaintiff admits that if J. L. and John H. Logan had answered the cross interrogatories that their answers would have been practically the same as that of the other witnesses who did answer the same cross interrogatories.

Plaintiff urges his objections as to the admissibility of these depositions on account of the failure to answer the cross interrogatories.

By the Court: The Court overruled the motion, reserving to the opponent the right to urge such objection to each interrogatory and

answers as offered, and reserving such right to present such objections to the testimony when offered.

The objection that certain witnesses failed to answer cross interrogatories is overruled because of the admission above named.

The papers offered in this case to-day shall be filed by the clerk of Court as of to-day.

By Mr. Gouhenant: Offering: With full reservation of all objections previously filed as to the legality of the appointment of the trustee in bankruptcy, and for the only purpose of showing the authority of the Trustee to prosecute this suit, plaintiff offers in evi-
31 dence certified copy of appointment of James A. Kinder as trustee in this case, marked "P 1."

By Mr. McCoy: Objected to for the same reasons urged at the trial of the motion of want of authority.

By Mr. Gouhenant: With the same reservations and for the purpose of showing the title to be vested in the trustee as the trustee of the bankruptcy of Cleophe Benoit, plaintiff offers in evidence document marked "P 2" being a certified copy of the bond of J. A. Kinder as trustee herein.

By Mr. McCoy: Object to this, as well as all other documents or evidence going to show the legality of the appointment, for the same reasons urged in the trial of the exception of want of authority to prosecute the suit. This objection to be general specially with relation to such document or piece of evidence.

By the Court: The objection is overruled, and it is ordered to stand as a general objection, and the ruling to apply to all documents offered in evidence.

By Mr. Gouhenant: With the same reservations as above made, and for the purpose of showing the date of the adjudication, plaintiff offers in evidence certified copy of the adjudication of Cleophe Benoit in bankruptcy, marked P 3.

By Mr. Gouhenant: For the purpose of showing the interest of James A. Kinder, Trustee, as representing the creditors in prosecuting this suit, and for showing the balance due the creditors, plaintiff offers in evidence the final account of James A. Kinder, filed in Bankruptcy, number 187, Cleophe Benoit, with leave to substitute certified copy, marked P 4.

For the purpose of showing the date of the sale from
35 Cleophe Benoit to Edward Scharff, plaintiff offers in evidence certified copy of a deed, made by the clerk of Matagorda County, Texas, and attached to plaintiff's petition, marked P 5.

Mr. Charles P. Martin, being first duly sworn by the judge, testified as follows:

Direct examination by Mr. Gouhenant:

Q. Mr. Martin, where do you reside?

A. Lake Charles.

Q. Are you acquainted with Edward Scharff and Cleophe Benoit, the defendants in this case?

A. Yes.

Q. Are you the same Charles P. Martin who gave your testimony before the referee in bankruptcy on or about the 31st day of October, 1908?

A. I don't remember the exact date, but I did give my testimony about that time.

Q. I hand you document marked "P-5", purporting to be a deed from Cleophe Benoit to Edward Scharff, passed before Charles P. Martin, Notary Public, Orleans Parish, Louisiana, will you please state whether or not you are the Charles P. Martin before whom the deed was passed?

A. I am.

By the Court:

Q. As notary?

A. As notary public.

By Mr. Gouraud:

Q. What was that deed, Mr. Martin?

A. That was purporting.

By Mr. McCoy: Objected to as the deed being the best evidence.

By Mr. Gouraud:

Q. The deed covering this land is the same land that is involved in this suit?

A. I cannot say whether it is or not.

Q. Look in the petition and see, Mr. Martin.

A. Of course, if I can compare the description I can tell.

By Mr. McCoy: Objected to as the petition and deed show what it is.

By the Court: The objection is sustained.

By Mr. Gouraud:

Q. Now, Mr. Martin, previous to the execution of this deed by Mr. Benoit and Mr. Scharff, did you have any conversation with Mr. Benoit about this land?

By Mr. McCoy: Object to any conversation with Mr. Benoit unless in the presence of Scharff, as it would not be binding upon Mr. Scharff unless he was present.

By the Court: The objection is overruled, and the evidence is admitted for what it is worth.

A. I did.

By Mr. Gouraud:

Q. Did Mr. Benoit, in this conversation tell you that he was going to transfer this land to Mr. Scharff?

By Mr. McCoy: Objected to as leading and suggestive.

By the Court: The objection is sustained.

By Mr. Goudeau:

Q. Mr. Martin, do you remember having a conversation with M
Benoit in regard to transferring this land, selling this land to
one?

A. Yes.

Q. Where was that Mr. Martin?

37 A. That I cannot say. In my office in Welsh.

Q. Who was present, do you remember?

A. I don't remember, but there were several present, though

By the Court:

Q. You don't remember who they were?

A. One of them was A. J. Davidson, possibly J. H. Labit. he w
interested at that time and W. W. Welsh was also interested.

Q. And present?

A. I think present.

By Mr. Goudeau:

Q. Do you remember the substance of that conversation?

A. Yes, sir, I do.

Q. Please state what it is?

A. Mr. Benoit was unable at the time, as he explained to me
meet his obligations which was due on the land, and he feared th
he would lose all interest that he had in there and probably a lar
ment besides, and he asked me my advice at that time if it wou
not be better for him to sell it, get what he could at a loss at th
time than to try to hold it, and my advice was to try and sell
That was the substance on or about that time.

Q. Now before the execution of that deed, did you have any
conversation with Mr. Benoit in regard as to whose he was to rec
for it and what was the consideration given?

A. Before?

Q. Before the execution of the deed?

A. No, sir, I did not. I don't think there was anything befo
the execution of the deed mentioned, because the deal was consu
mated outside of my presence.

Q. Mr. Martin, in order to refresh your memory, I hand you yo
testimony given before George Taylor, and ask you when this co
versation took place which you have testified to.

A. Whether this conversation took place before or after the exe
cution?

38 Q. I ask you when?

A. On or about the same time the deed was passed?

Q. Was that the substance of that conversation at that time?

A. Before the deed?

Q. Whenever it took place?

A. It was after the execution of the deed to the best of my knowl
edge not before, after the deed had been signed up and closed.

Q. Now where was that conversation, Mr. Martin?

A. In my office.

Q. You remember the substance of that conversation?

A. Yes.
Q. Who was present?
A. Well, to the best of my recollection, there was Wesley Smith, Davidson, myself, and J. H. Labit.
Q. You are referring to the first conversation, or this conversation here, which I hand you the papers?
A. The conversation in regard to the purchase or consideration.
Q. Had the deed been executed or not?
A. It had been executed already.
Q. You say you remember the substance of that conversation?
A. Yes.
Q. Please relate it?
A. Well, after the deed had been passed and signed, Mr. Benoit was complaining there, saying how much he was losing on that land, and so on, or how much, and Mr. Scharff told him, he said, "Benoit, I have always tried to be good to everybody around here, in case I make a profit on the land, after paying the expenses and 8% interest on the money that he invested in it, I shall remember you, and recompense you," or something to that effect.
Q. Does that correspond with the testimony given on the former trial, Mr. Martin?
A. (Looks at testimony.) He also mentioned the payment of that bank debt. That's about the same thing, it covers about the same substance, I think.

By Mr. McCoy:

Q. Who mentioned the payment of the bank debt?
A. Who did?
Q. Yes?
A. Mr. Scharff did.

By Mr. Gourgas:

Q. Did Mr. Scharff agree to pay a debt that was due to the First National Bank of Welsh?
A. Yes, under the same consideration, in case that he should make a profit, when he was complaining what he was to lose about it.
Q. Now previous to executing this deed to Mr. Scharff, did not Mr. Benoit go to you and have a conversation with you and offer to transfer you that land?
A. Not to me personally, to the bank.
Q. And at that time did you have a conversation with him in regard to the sale of this land?
A. To who?
Q. To Scharff?
A. No, sir, I don't remember that.
Q. Now, in that testimony you testified as follows: the following question was asked you: "Do you remember the substance of what was said", that was relating to that conversation, and your answer was: "Yes there was a good deal said to the best of my recollection, Scharff was to buy the land and assume the payments of the notes due on the land, and he was to sell the land at some future date

whereby he would refund to Mr. Benoit, if any, that is, some of t
profits that would be realized from the sale, deducting 8% inter
on all monies paid out on the land, also that Mr. Benoit had
cluded that the claim of the Welsh National Bank would be pa
and would be one of the first claims paid if Scharff made any pro
and turned over to him, in other words, turn over to M
40 Benoit, that was one of the reasons why I was interested
that particular instance." That's correct, Mr. Martin,
it not?

A. That's correct.

By Mr. McCoy: Object to this testimony for the purpose of sho
ing interest of Benoit in the land, which could only be establish
by a counter letter. This is to be general to all testimony of th
character.

By the Court: The opinion of the court is that a counter let
only refers to the parties to the transaction as between themselv
they could not attack their own acts except by third parties, but
far as creditors and third parties are concerned where fraud
charged they can introduce any evidence and parole evidence is
missible. The court overrules the objection and makes this gene
as to all evidence offered for the same purpose.

The court states further that it has no right to rule and the plaint
in the order in which he introduces his evidence. If it develops th
there is no value to any of the claims of the creditors and is a qu
tion between the parties, this evidence will be disregarded.

By Mr. Goudeau:

Q. Now the question was asked you if there was to be a divis
of profits with Benoit and Scharff, and your answer was "Yes, s
but I don't know what proportion." (The stenographer has it pre
sition, but I suppose "proportion" is meant.)

A. Was that the question asked?

Q. Yes, sir, that's the question asked, there was to be a divis
between Mr. Benoit and Scharff, but I don't know what proportion

A. The answer was correct, I suppose, but I don't recognize th
question. What I meant to say, and what I said, as stated before
that he told him he would recompense him.

Q. Was there any cash paid at the time of this transfer, M
Martin?

41 A. Not in my presence.

Cross-examination by Mr. McCoy:

Q. Mr. Martin, Mr. Benoit had made a proposition to Mr. Schar
in your presence, had he not, that Scharff was to assume the i
indebtedness due upon the land, which was secured by mortgage
take the deed to the land, and after selling same, if he made an
profit, it was to be divided equally, which proposition Mr. Schar
refused, telling Mr. Benoit that he would under no circumstance
have any partner in the transaction, or words to that effect?

By Mr. Goudeau: Objected to as leading and suggestive, and n

such conversation having been brought out in the examination in chief.

By the COURT: The objection is overruled.

A. Yes.

By Mr. McCoy:

Q. At this time, Mr. J. H. Labit, who then resided in Welsh and F. C. Labit, who then resided in Crowley, owned an undivided half interest in the land, and Mr. Benoit the other half interest, as it was represented to you by both Mr. Cleophe Benoit and J. H. Labit, is that not a fact?

By Mr. GOURDEAU: Objected to for the reason that if Labit owned any interest in the land the deed would be the best evidence.

By the COURT: The objection is sustained.

By Mr. McCoy:

Q. Mr. Martin was anything said by Mr. Benoit at that time in your presence relative to any one else owning an interest in the land?

A. Yes, sir.

Q. Who else did he tell you owned an interest in the land?

A. J. H. and F. C. Labit.

Q. Where did J. H. Labit reside at that time?

A. Welsh.

Q. Where did F. C. Labit reside?

A. Crowley.

Q. (Refresh your memory by examining this deed.) On the 2nd day of May, 1904, was any other deed passed before you relative to this same transaction?

A. Yes.

Q. Who was it that executed the other deed in connection with the same transaction?

A. Mr. Scharff and Benoit.

Q. Same connection?

A. What do you mean, who executed it?

Q. Yes.

A. J. H. Labit and his wife.

By the COURT:

Q. To whom?

A. Cleophe Benoit.

Q. They sold to Cleophe Benoit?

A. Yes.

By Mr. McCoy:

Q. On the same day?

A. Yes, sir.

By Mr. GOURDEAU: Objected to this evidence as irrelevant and immaterial any deed from Labit to Benoit could not affect a deed from

Benoit to Scharff, that title was vested in Benoit and it is irrelevant who were the previous owners in the land.

By the COURT: The objection is overruled.

By Mr. McCoy:

Q. Mr. Martin, the proposition which Mr. Scharff made to Cheatham Benoit and Howard Labit, or J. H. Labit, was that they were
43 to transfer to him the title to the land and he was to reimburse J. H. Labit and E. C. Labit $543.35, which they had paid as interest and taxes upon the land, and assume the payment of the mortgages upon the land, and informed them that that was the most he would pay to them, was it not?

By Mr. GOURDEAU: Objected to for the reason that the deed is the best evidence to show the consideration which Scharff was to pay to Benoit, and that any transaction between Labit and Benoit is irrelevant and immaterial to the issues of this case.

By the COURT: The Court admits the evidence, but suggests to the attorney that it is not exactly a fair way of asking the question. You should ask Mr. Martin whether Mr. Scharff undertook, in the presence, to repay to Mr. Labit for Mr. Benoit, not telling what he undertook and ask if that is so.

By Mr. GOURDEAU: Objected to for the further reason that if there were a deed from Labit to Benoit, that the deed is the best evidence as to what the consideration was.

By the COURT: The Court overrules the objection, and suggests to the attorney for the defense hereafter not to state the answers they he wants, but ask the question allowing him to direct the witness to any point which he wants to testify.

A. Yes.

By Mr. McCoy:

Q. Mr. Martin at the time that these deeds from Labit to Benoit and from Benoit to Scharff were passed before you, did not Mr. Scharff give Mr. Labit a check for $543.35, as repayment of funds which he and his brother had applied to the payment of taxes after they had acquired the half interest from Benoit?

By Mr. GOURDEAU: Objected to for the reasons previously urged that the deeds are the best evidence as to what the consider-
44 ation was and that if any check was given to Labit the check would be the best evidence.

By the COURT: The objection is overruled, except that part with reference to the check. The check is the best evidence unless you can show it cannot be produced.

By Mr. McCoy:

Q. Mr. Martin did Scharff gave either Mr. Benoit or Mr. Labit a check at the time the deeds from Labit to Benoit and from Benoit to Scharff were passed before you, and if so what was that check for? (Not the amount.)

By Mr. GOURDEAU: I wish to urge as a general objection to the ob-

possession of all such testimony, that the deeds in this case was the best evidence as to what they contained, and any transaction between Scharff and Benoit and Labit and Benoit does not affect the issues of this case, that is, in so far as the purchase by Benoit from Scharff is concerned.

By the Court: The Court understands the point in this case to be that the deed from Benoit to Scharff was an illegal fraudulent transaction made in violation of the bankruptcy laws of the United States, and the Court rules, in order to ascertain the validity of that transaction, whether it is void under the bankrupt law, that the circumstances and transactions connected with that deed are open for investigation whether written or verbal, therefore, overrules the objection. The objection is ordered to be general, and ruling as such.

A. Check was given in payment of the equity held by J. H. and P. C. Labit into the land that they sold to Cleophe Benoit, which was done in my office.

By the Court:

Q. Mr. Martin was this check given as a part of the deal between Scharff and Benoit?

A. Yes, sir.

By Mr. McCoy:

Q. Mr. Martin was there anything said at that time by the parties to the transaction as to the value of the land at that time owing to the condition that existed in Texas then?

By Mr. Gourgeau: Objected to for the reason that if this sale is null and void, and if it was made for the purpose of defrauding, hindering or fraudulently placing the property behind the reach of Cleophe Benoit's creditors, and that whether or not Scharff paid the full value of the land is irrelevant and immaterial, and does not affect the issues of this case.

By the Court: Objection is overruled.

By Mr. Gourgeau: And for the further reason that it is not shown whether this witness knows what the conditions of the value of the Texas lands were.

By the Court: The objection is overruled.

A. Yes, there was a good deal said.

By Mr. McCoy:

Q. What was said by the parties to the transaction? Just repeat it relative to the value of the property at that time.

By Mr. Gourgeau: Same objection, and ask that it be made a general objection.

By the Court: Overruled.

A. Scharff said at the time that he was making the deal, and it was generally understood among us that values had been at least 50% less at that time than they were a couple of years before.

16 By Mr. McCoy:

Q. was there anything said as to whether or not the indebtedness on the land represented its value, or very near its value?

A. At that time?

Q. Yes, at the time of the transaction?

By Mr. Courtney: Objected to as irrelevant and immaterial.

By the Court: The objection is overruled.

A. There was.

By Mr. McCoy:

Q. What was said regarding same?

A. Well, it was stated right in my presence and in a general conversation that the land had been offered to several parties to assume the indebtedness and that they had been unable to get anyone to take it.

Q. Take the property and assume the indebtedness?

A. Yes, sir.

Q. That was stated by Mr. Benoit or Schaill?

A. Yes. Benoit had offered the same proposition to the Welsh National Bank.

Q. And it was refused?

A. And it refused.

Q. Mr. Martin what office did you hold in the Welsh National Bank at that time?

A. Acting President.

Q. Why did the Bank refuse that proposition?

A. Why, because it was not a good business proposition.

Q. In other words, the indebtedness on the land was equal to its value at that time?

By Mr. Courtney: Objected to as irrelevant and immaterial, and for the further reason that under the National Banking Laws
17 National Banks are prohibited from owning or purchasing real estate except for banking purposes.

By the Court: The objection is overruled.

A. Yes, sir.

By the Court:

Q. When the Bank at Welsh refused that offer had they any knowledge or intimation of the insolvency of Mr. Benoit?

A. No, Sir.

By Mr. McCoy:

Q. Mr. Martin at the time of this transaction you were President of the Welsh National Bank?

A. Yes, sir.

Q. You were also a director of the First National Bank of Welsh, were you not?

A. No, I was a stockholder, not a director.

Q. You were connected with a mercantile establishment at Welsh?

A. Yes.

Q. And you and Mr. Davidson were also conducting a real estate business then?

A. Yes, sir.

Q. You tried to keep fairly well posted as to the financial condition of the people residing in Welsh?

A. Yes, sir.

Q. At that time did you know or suspect that Cleophe Benoit was insolvent?

A. No, sir.

Q. Did you know or suspect that either J. H. Labit or F. C. Labit was insolvent?

A. No, sir.

Q. Mr. Martin I notice you stated in your testimony taken before Mr. Taylor as Referee, that Benoit agreed to pay to the Welsh National Bank a debt which he owed the Bank, in the event that Scharff paid him any profit, that agreement was made between Benoit and you and Welsh, as representing the Bank?

By Mr. Gouaux: Objected to for the reason that the testimony does not say that it was Mr. Benoit that was to pay. We take it in the testimony in connection with previous questions that it was Mr. Scharff who had agreed to pay the Welsh National Bank, because Mr. Martin himself said that was one of the reasons why he was interested in that particular instance, referring to the land deal.

By the Court: Let the answer be given.

A. That's correct.

By Mr. McCoy:

Q. Mr. Welsh was at that time the Cashier of the Welsh National Bank?

A. He was.

Q. Mr. Martin, Mr. Scharff did not assume the payment of that indebtedness to the Welsh National Bank as a portion of the consideration of the transfer to the land to him, did he?

A. He refused to do it.

Q. He refused to do it?

A. Yes, sir.

Q. Do you remember now whether Mr. Scharff was present when Mr Benoit promised you and Mr. Welsh that if Scharff gave him anything out of this transaction that he would pay it to the Bank?

A. If who was present?

Q. If Scharff was present when Benoit made that promise to you and Mr. Welsh?

A. Yes.

Q. Was he present?

A. Yes.

Q. Now Mr. Martin did Mr. Scharff tell Mr Benoit after the transaction was made when Benoit was complaining as to how much money he had lost, did he tell him what portion of the profits he would give him?

Q. Anywhere, as far as your knowledge goes?
A. In amounts or acreage?
Q. Yes, sir, acreage?
A. He owned at the time a brick building and a store at Welsh, a residence there, or two residences, I think. I understood that's all he had in this State.
Q. And the 1600 acres in Texas?
A. Yes, sir.
Q. In your testimony given before the Referee the question was asked you as to whether there was to be a division of profits between Mr. Benoit and Scharff and your answer was, "Yes, sir, but I don't know what proportion," is that correct?
A. And the division of profit was referred to the same proposition that I have stated before. To the best of my knowledge, I remember Scharff said that he would recompense him, and there was no amount stated.

Q. In your testimony before the Referee why did you give your testimony as a division of profit and now you make it a recompense?

A. Because Mr. Scharff stated afterwards to my knowledge after the deed was done, he said after getting my money out of this land if I should sell it, and 8% on all investments, if I should make a profit I will recompense you.

Q. Do you know what that property is worth at present?
A. I don't. I understand it is considerable more than it was at that time.
Q. There would be a profit from your estimate?
A. Yes, sir.
Q. Do you know how much cash Benoit had paid on this land.

By Mr. McCoy: Objected to as irrelevant and immaterial.
By the Court: Let the evidence be admitted for what it is worth.

A. I do not.

By Mr. Goudeau:

Q. Now, Mr. Martin you have testified that you did not know that Benoit was insolvent, didn't you know that he could not meet that obligation at the bank?

A. I did not know that he could not meet it by pressing him, but we did not like to do that with any business man in our community.

Q. Well, why did you agree that this land should be transferred to Scharff and the knowledge, as you stated, that Benoit was to ever get anything out of this property, and then depend on that uncertain fact of Benoit getting out of the profit to pay your amount out of it?

A. Because we, as a bank, at that time we understood that was the only responsibility that he owed, that by unloading that responsibility unto Scharff by selling that land that it would leave him clear, he so stated that he did not owe anything else that would

bother him at that time except these notes that were due on that land.

Q. Didn't you know that he was owing you?

52 A. The papers were not due then, but he had offered the property to the bank and we refused to accept it because we did not want to put that much money in it.

By the COURT:

Q. When this deed was made did you release Mr. Benoit of that debt and look to Mr. Scharff for the payment?

A. No, Sir, he would not pay it.

Q. You still have it against Mr. Benoit?

A. Yes, sir.

Q. Did you ever file it in the bankrupt court?

A. The cashier, at the time, I don't know whether he filed it or not.

Q. Then it is your interest that this property should be set aside and this estate should go back to Benoit, or to Benoit's bankrupt estate, it is your interest as a creditor?

A. As a creditor, yes, sure.

By Mr. McCoy:

Q. Mr. Martin the Bank has since gone into liquidation?

A. Yes, sir.

Q. Are you one of the liquidators?

A. Yes, sir. Chairman.

Q. The notes that were secured by mortgage upon this land and assumed by Scharff were not held by the Welsh National Bank, were they?

A. By the Welsh Bank. No, they had been sent there for collection at one time, but returned to the owners.

Q. Then the indebtedness which you spoke of Benoit owing to the Bank and which Scharff refused to assume was a different indebtedness from that which was secured by mortgage upon the land?

A. It was different, yes, sir.

By the COURT:

Q. Mr. Martin did you know whether that indebtedness assumed by Scharff in that transaction has been paid by him?

A. I do not, Judge.

Witness excused.

Mr. CLEOPHA BENOIT, being first duly sworn by the Judge,

53 testified as follows:

Direct examination by Mr. GOUDEAU:

Q. Mr. Benoit you are the same Cleopha Benoit who was adjudged a bankrupt in 1904, are you not?

A. Yes, sir.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. Will you please tell the Court all about this transfer of the land, of this 1500 acres of land situated in Matagorda County to Mr. Scharff, relate the whole from beginning to end?

A. I cannot explain myself very good in English, but I will do the best I can, Judge.

One day I walked on the street and Mr. Scharff asked me how business with me, and I told him business was pretty bad. Well, how, I told him——

Q. What did you tell him?

A. I told him I was going to lose everything that I had. I got just my land in Texas left and I am sure I cannot pay for it. He says "that's too bad". I says, yes, sir, I like to keep that land, and he did not tell me any more. A few days after that I passed by him and he called me up. He said Mr. Benoit come here. I went to him. He said if you want I can sell that land for you. Well, I said, Mr. Scharff if you could do that for me, you shure help me a whole lot because I hate to lose that land. He said keep good over——. He said I will save that land for you. I said all right and I went back home, and a few days after I said I would like to know how you can save that land for me. I owe $61,000 on the land and I don't see how you can save it for me and I go talk about it. I told my wife one evening after supper, I said I would go and see——

By Mr. McCoy: Object to what he told his wife.

By the Court: The objection is sustained.

A. Well I went to see Mr. Scharff. (Can say that?) I went to see Mr. Scharff, and I knocked on his door and he opened the door. He told me to get in and I got in. And we talked a little, and I asked him, I said "Mr. Scharff I come to see you about what you told me the other day about my land." Well he said I want to make a proposition to you. "Well, I said I would like to know what it is. He said if you want to deed me that land I will pay for the land and when I sell the land I pay you your money back and I take my money and we divide the profit." I said "that is all right, if you can do that, I is very glad to get that, because I want to pay what I owe, and I got nothing to pay what I owe. "Well," he said, "look here, if I take that land you got to give me time to sell it." I said "Yes, sir."

By Mr. McCoy:

Q. Give what?

A. Time to sell the land.

I said take the time you want Mr. Scharff, if you want to do that with me, I say take all the time you want." He said, "maybe I can't sell that land before four or five years." I said "that's all right, take your time." A few days after that they were pressing me for what I owed all the time. I have some other debt. I could

not pay. I spend all the money I got I paid, and I went to the bank to see Mr. Wesley Welsh and Mr. Martin. I told him "Now I can not pay you what I owe you, and if you want to take that land and pay what I owe and give me the difference, I will let you have the land." Charlie told me he said, "we cannot handle land. I cannot do anything with that land." "Well, I said, the best I can do. Mr. Scharff told me a little while ago if I wanted to sell that land [illegible] and he will pay what I owe you. He say you go and get Mr. Scharff. I found him here, and I went and got Mr. Scharff and Mr. M[illegible] asked him if he wanted the land and he said yes he would take the land, and he asked Mr. Scharff if he was willing to pay when I sell the land all I owe the Bank. Mr. Scharff said yes. "I am willing to pay that." He said "Are you willing to give some more
55 to"? He said "Not a thing". I just pay that when I sell the land." And we made the papers that same day.

By the Court:

Q. That day you made the sale?
A. Yes, sir.

By Mr. Goudeau:

Q. Now, in that first conversation that you had with Mr. Scharff when he asked you if business was good, you say you told him that you were in a bad fix, that you could pay your debts, that you were afraid to lose your land?

By Mr. McCoy: Objected to as leading and suggestive.

By the Court: Sustained because it is leading and because it is a repetition.

By Mr. Goudeau:

Q. Now, that first conversation that you had was about how long before you made that transfer?
A. Oh! about a month.
Q. About a month before?
A. About a month before.
Q. Did you have any conversation with Mr. Lee Robinson in regard to this land?
A. Yes, sir.
Q. Before you transferred it to Mr. Scharff?
A. Yes, sir.
Q. Please state what that conversation was?

By Mr. McCoy: Objected to as not being binding upon Scharff unless he was present; any conversation between Mr. Benoit and Robinson or any other parties is not binding upon Scharff.
By the Court: Admitted for what it is worth.

A. Well, Mr. Robinson offered me to— Well I went to see Mr. Robinson and asked him if he don't like to buy that land.
56 he said "No, I cannot buy your land, but I can give you a trade if your land suits me. I got 100 acres of land on the

you. He said I go and look your land and if your land suits me will give you a trade." He went and looked at the land and when he came back he said he "wanted to see your land and your land is worth about $10. an acre, and if you pay me $30. for mine, we make the trade." I said, well that's a pretty good deal for me, if I can get up the difference. He said I give you time to pay the difference. He said "If you need any money to put on the land I will help you." And I went back to Mr. Scharff and I told him what Robinson offered me. "Well" he said, "you better not do that, you better deal with me, because you cannot pay Robinson that money you are going to owe him, and he is going to take your land back. You better make that deal with me as you will save better." He said anything you need, if I can I will help you." I said "all right I will take your proposition," and I take his proposition.

By the Court:

Q. Mr. Benoit explain that, if Mr. Robinson was going to give you $10 an acre, how would you owe him a balance, when you are going to buy only 100 acres.

A. $30. an acre.

Q. He was to assume that $6,000?

A. Yes, sir.

By Mr. Goodeau:

Q. Then the Robinson land would have been $12,000. 400 acres at $30. and he would allow you $16,000. $10 an acre, and he was to take the balance that was due on the land?

A. Yes.

Q. What was the balance due on the land?

A. $6,000.

Q. How much cash had you paid on the land?

A. I paid first $1,000, then I paid $2,000 after and the interest.

Q. You paid $12,000 for the 1600 acres?

A. Yes, sir.

Q. Now at the time of the deed, or before the deed was executed between you and Mr. Scharff, did he pay you any money for it?

A. Before you mean?

Q. Yes, sir?

A. No, sir.

Q. Neither at the time of passing the deed?

A. No, sir, he did not pay me anything.

Q. Did Mr. Scharff give you any money, or anything else of value for this deed?

A. Yes, sir.

Q. Tell the Court what it was and about how long afterwards?

A. Well, first, one day I needed some money pretty bad and I thought I would go and see Mr. Scharff, he told me whenever I needed any money to go to him. I went to him and I said "Mr. Scharff I need a little money, I could get it with you?" He said "Yes, sir." He said "how much do you want"? I said "I would

like to have what you can let me have." He said "$200 do you. I said "Yes, sir. I am glad to get that because I need it." He sa "will you give me your note?" I said "Yes, sir. I will do that I will give you my note." And after that he wanted——

Q. Was that before or after you went into bankruptcy?

A. That's after.

Q. About how long after?

A. About three or four months.

Q. Did you ever pay that note back to Mr. Scharff?

A. No, sir.

Q. What became of the note?

A. He gave it to me one day.

Q. Did he tell you anything when he gave it back to you?

A. Yes, sir.

Q. What did he tell you?

A. Well the reason he gave me the note back, I had a letter from my brother-in-law, Faurous, he could sell——

58 Q. Charlie Faurous?

A. Yes, sir. He told me anytime he could sell the land he could sell the land to help me. And I went to him with the lette and I told him, I said, "Mr. Scharff, I can sell the land if you want to sell it for $15.00 an acre." And he got mad, he said "what land" I said "My land and your land." He said "You got no land." I said "I did not know that." I said "I thought I got interest in the land the way I understood when we made the deal." He said nobody come to buy that land send him to me. He said "That's no land." "I never buy land for nobody else but me." I said "all right, Mr. Scharff, well I said that now I got to pay you that" He said "No, you want that?" I said, "Yes, if you want to give it to me"? He just went to his safe or some bureau, he got the note and me the note.

Q. Did you ever get anything from him after that?

A. Yes.

Q. What was that?

A. Cattle.

Q. Tell us how you paid for it, was that after that note?

A. No, that's before.

Q. You got the cattle before he gave you the note?

A. Yes, sir.

Q. Tell us——?

A. One day he come to me, he says "I want to sell you my cattle", I said Mr. Scharff, I cannot buy your cattle, I got no money to pay for it." He says "I will let you have it on your hand, the same way I let you have that money" he said "I got to buy that land with you some day, anyway."

By the Court

Q. Said what?

A. I got to buy that land with you, pay you for the land some day anyway. I said "If that's the way you want to sell I might buy" and he take me down to his cattle and he kept what he wanted and he

sold me the rest. He sold me the cow for $25. Two year old $18.00, I believe $18.00 and the yearlings $15.00. And I believe I bought around $100 worth that day.

By Mr. Goudeau:

Q. Was that after or before you went into bankruptcy?
A. That's after.
Q. Was that after or before he had loaned you that $200?
A. That's after.
Q. After he had loaned you the $200?
A. Yes, sir.
Q. And what was the consideration which you paid him for it?
A. Well I paid the cow $25.00 and two year old $18.00 and the yearlings $15.00.
Q. How did you pay for it?
A. Well, he let me have it on the land, that's what he told me.

By the Court:

Q. You say the cattle amounted to $100?
A. Something like that, I believe.

By Mr. Goudeau:

Q. Did you buy anything from him after that?
A. Yes, sir. I bought some cattle.
Q. How did you pay for them?
A. He sold me half of the cattle the same way and the other I paid for it.
Q. What do you mean payment the same way?
A. Payment on the land.

By the Court:

Q. How much was that time?
A. About same thing.
Q. About $100.?
A. Yes, sir.

By Mr. Goudeau:

Q. That makes $800 that he paid you with the note?
A. Something like that.
Q. That he gave you after you were adjudicated a bankrupt?
A. Yes, sir.
Q. After you were adjudicated a bankrupt and after this sale, or this pretended sale, did you have anybody to write and find out what the value of that land was?
A. Yes, sir.
Q. Who was it?
A. Mr. Charlie Carr.
Q. How long was that after you were adjudicated a bankrupt?
A. Well, if I remember right, it was about two or three years.
Q. Now, Mr. Benoit, before making this transfer to Mr. Scharff

did you have occasion to consult any lawyer about making this deed to Mr. Scharff?

A. Yes, sir.

Q. Who was it?

A. Mr. Gorham.

Q. Judge Gorham in Lake Charles, La.?

A. Yes, sir. I came with Mr. Scharff.

Q. Mr. Scharff was present when ——?

A. Yes, sir.

Q. Did Mr. Scharff hear the conversation you have with Judge Gorham?

A. Yes, sir.

Q. He was right present?

A. Yes, sir.

Q. Did you tell Judge Gorham the condition and manner in which you were going to transfer this land?

A. Yes, sir.

Q. What did Judge Gorham say?

A. He said Mr. Scharff is going to give you a quieter letter. I said no. He don't want to do that. He said you put your head in a lion's mouth. He said he is going to bite you.

Q. Did you explain to Judge Gorham how you intended to transfer it?

A. Yes, sir.

Q. Did you tell him the agreement you and Mr. Scharff had?

A. Yes, sir.

Q. And Mr. Scharff was present?

61 A. Yes, sir.

Q. What business were you engaged in at the time of the transfer?

A. When I deeded that land to him?

Q. Yes, sir.

A. I run a store.

Q. Did you turn over to the bankrupt court all your property with the exception of this 1600 acre tract?

A. Yes, sir.

By the COURT:

Q. Did you turn over to the court any claim against the land?

A. No, sir.

By Mr. GOUDEAU:

Q. Why didn't you?

A. Well because I thought if I let Mr. Scharff about that land I got a chance to pay my debts. I might do wrong if I did that I tell you the fact, honest, because he tell me when he sold it he give me my money back and I thought I could pay what I owe, and that's what I want. I want to pay my debts. I can prove that I pay my debts all my life, except at that time and I could not do it.

Q. How much did you come to Welsh with when you first came there?

A. I got $22,000.

Q. Mr. Scharff had agreed to give you your $6,000 that you paid on the land back?

A. Yes, sir.

Q. And half the profit?

A. Yes, sir.

By the COURT:

Q. Agreed to give you $6,000 in addition to the $6,000 mortgage that he assumed?

A. Yes, sir.

Q. And you say he did give you in money and cattle between $8500 and $9000 after your bankruptcy?

A. Yes, sir.

Q. Did you turn them over to the bankrupt court?

62 A. That's after.

Q. I know, but did you turn it over to the bankrupt court?

A. No, sir.

Cross-examination by Mr. McCoy:

Q. Mr. Benoit, at the time that you went to Mr. Scharff and got $200 and gave him your note, didn't you tell him that your house was leaking and that you wanted to get some money to fix your house so as to shelter your family?

A. Yes, sir.

Q. And asked him to let you have the money for that purpose?

A. Yes, sir.

Q. And he gave you the $200.

A. Yes.

Q. You gave him your note?

A. Yes, sir.

Q. There was nothing said about land at that time?

A. Yes, sir, he told me that on that same day.

Q. He told you that?

A. Yes, sir.

Q. What did he tell you about the land then? Not the time that he gave you the note back, but the time that he gave you the money and you gave him the note?

A. I told him, "All right, Mr. Scharff."

By Mr. GOUDEAU:

Q. What did Mr. Scharff say?

A. What he said?

Q. Yes.

A. He told me, "It's all right, I can get the money with him."

By Mr. McCOY:

Q. He asked you to give your note?

A. Yes, sir.

Q. And you gave it?

A. Yes, sir.

Q. And you thanked him for it?
63 A. Yes, sir.
Q. And that was all that was said?
A. Yes, sir.
Q. Now Mr. Benoit, at the time that you got the cattle from Mr. Schaffl you had already started a butcher shop in Wichita, hadn't you? At the time that you went to Schaffl for the cattle.
A. I guess so, yes, sir.
Q. You went to Mr. Schaffl and told him that you wanted to get these cattle to kill and sell it in your butcher shop, but you did not have the money at that time to pay it?
A. No, sir, I never did.
Q. Didn't you kill the cattle and sell them in your butcher shop?
A. No, sir.
Q. What did you do with them?
A. Kept them.
Q. Kept them?
A. Yes, sir.
Q. You still got them?
A. Yes, sir.
Q. You never killed them?
A. I killed a few.
Q. You killed a few and sold a few?
A. Yes, sir.
Q. The first purchase of cattle that you made from Mr. Schaffl was eighteen cows at $22.50 a head and ten calves at $8.00 a head, was it not?
A. Let me see——
Q. Was ten of them at $8.00?
A. Maybe, I don't remember.
Q. You don't remember the number of head?
A. No, sir, I don't.
Q. You and Mr. Schaffl agreed upon the price at that time?
A. Yes, sir.
Q. Then you got no more cattle from him, you paid him $175.00 cash?
64 A. Before what?
Q. Before you bought any more cattle from him?
A. No, sir.
Q. You did not?
A. No, sir.
Q. The next cattle that you bought from him, do you remember the number of cows that you bought?
A. No, I don't Mr. McCoy.
Q. Nor the number of yearlings?
A. No, sir, I don't remember, I cannot tell you how many head I bought the last time.
Q. When you paid him for these cattle you paid him $175.00 at one time?
A. Yes, sir.
Q. And you paid him $50 at another time?

A. Yes, sir, I believe so.

Q. And Mr. Scharff asked you for the balance on two or three different occasions?

A. No, sir, I paid him all.

Q. Didn't he ask you for the balance due on the cattle?

A. No, I paid him for half of it.

Q. You never paid him for the other half?

A. No, sir, I never paid.

Q. Mr. Benoit —

A. He asked me for just half cash.

Q. Half cash?

A. Yes, sir, he say he would let the rest go like I buy the other bunch.

Q. Mr. Benoit isn't — [illegible] at the time when you bought the cattle the price agreed on that you did not say anything about the land then?

A. I said what we talked about, me and Scharff.

Q. The land transaction only come up after when he wanted you to pay for them?

A. No, sir.

Q. You are positive of that?

A. Before —

Q. Came up before he asked you to pay for them?

A. He never asked me to pay for the cattle.

Q. Did he ever ask you to pay the note?

A. No, sir.

Q. He never did?

A. No, sir.

Q. But when you went to him and spoke to him about selling that land at $15.00 and showed him Mr. Harmon's letter that was after you had borrowed the $200, and after you had bought the cattle?

A. Yes, sir.

Q. Was that the first time that you ever said anything to Scharff that the deal was made about having an interest in the land?

A. No, sir.

Q. It was not?

A. We talked about that before.

Q. Before what, before the deal?

A. No, before I went to tell him I would sell the land for $15.00.

Q. You talked about it before that?

A. Yes, sir, he talked about our land many time before that.

Q. Mr. Benoit at the time you sold this land to Mr. Scharff, the time when you first commenced talking with him about it, Mr. Howard Ladd and his brother owned a half interest in the land didn't they?

A. Yes, sir.

Q. The conversation you had with Mr. Scharff at the time the deal was made Mr. Scharff was present?

A. No, sir.

Q. He was not?

A. No, sir.

Martin's office the same day that the deed from Laird to you and the one from you to Scharff was executed, that Scharff was to give you one half of the profits and that he refused, and that this proposition and refusal both took place in the presence of Charlie Martin, the Notary before whom the deed was passed?

A. No, sir. He never proposed that.

Q. He did not?

A. No, sir.

Q. Then Mr. Martin is badly mistaken when he testified to that?

A. He sure is bad mistaken.

Q. Mr. Benoit did I understand you to say that Mr. Scharff went with you to Mr. Gorham's office?

A. Yes, sir.

Q. You are positive of that?

A. Yes, sir.

Q. When you went into bankruptcy did you tell your lawyer about this agreement with Scharff, the lawyer who prepared your schedules?

A. No, sir.

Q. You did not?

A. No, sir.

Q. The lawyer who prepared your bankruptcy papers asked you to give him a list—a statement of everything you owned?

A. Yes, sir.

Q. Everything that you had any interest in?

A. Yes, sir.

Q. And you turned over everything you had every thing

A. Yes, sir.

Q. You did not tell him anything about it?

A. No, sir.

Q. You swore that the statement in that schedule was correct?

A. Yes, sir.

Q. You knew then at the time if your statements were true that you were leaving the interest which you claimed in this land?

A. Well, of course, I did that because I thought I kept

67 that and pay my debts the way I agreed with Mr. Scharff.

Q. Mr. Benoit if you were doing that to pay your debts how did it happen then that you did not turn over the $200. that you got from Mr. Scharff and the cattle that you got from him to your creditors, if it was your intention to turn all this property over to your creditors?

A. I did not have to, because my lawyer told me after I went to bankruptcy he said I could go to work and try to make a living and that's why I didn't.

Q. You have accumulated property since your bankruptcy?

A. Sir?

Q. You have acquired property since you went into bankruptcy?

A. Yes, sir.

Q. You haven't applied any of the property you acquired since

you went to bankruptcy to the payment of the debts you owed before that?

A. No, sir.

Q. Mr. Benoit a short time before this suit was brought you went to Mr. Scharff and threatened him——

A. And what?

Q. And told him if he did not pay you a large amount of money that you would bring suit to recover this land?

A. No, sir.

Q. You did not?

A. No, sir. I don't remember to say Mr. Scharff anything about the land.

Q. You don't remember saying anything to him about the land before the——

A. No, sir, about getting paid for it, no, sir.

Q. You just testified that you went to him for money on the land?

A. Yes, sir. I never asked him to pay me a great amount of money on the land.

Q. What was it on you got a great amount of money for?

A. I never asked him to give me anything.

Q. You did not?

A. No, sir, I just asked Mr. Goudeau what he thought about it.

Q. Who?

A. Mr. Goudeau.

By Mr. McCoy.

Q. Mr. Benoit when Mr. Robinson made you an offer to trade the land at that time the two Labits owned a half interest in the land, didn't they?

A. I don't remember.

Q. You don't?

A. No.

Q. Well, then how long was it then before you sold it to Scharff was it that when you and Robinson had your conversation and talk about trading?

A. Well, I cannot tell you.

Q. Well, was it a month, two months, or a year?

A. It was a month, something like that, a month or two months. Labit got it that time, I believe.

Q. You had sold it to Labit more than a year before you had gone into bankruptcy?

A. Yes, sir.

Q. Then at the time you were talking to Mr. Robinson you only owned a half interest in the land?

A. Yes, I believe so.

Q. Well did you go and tell Labit about Robinson's proposition?

A. I believe so. I am sure of it.

Q. There was another residence that belonged to you?
A. No, sir. I got it sold. Mr. Robinson sold it for me.
Q. That was before you made this trade with Mr. Scharff?
A. Yes, sir.
Q. You also had interest in a store at Welsh?
A. Yes, sir. I got an interest in one yet.
Q. Mr. Benoit I am not asking you what interest you have now At the time you sold this land to Scharff you was running a store in Welsh?
A. Yes, sir.
Q. That store you turned over to the bankrupt Court?
A. Yes, sir.
Q. Mr. Benoit you had offered the Welsh National Bank to deed them this land if they would pay the mortgages on it hadn't you?
A. Well, I offered to sell it to them, yes.
Q. Sell it to them?
A. Yes, sir.
Q. For the amount that was due on it?
A. No, sir, not that way.
Q. How was it?
A. I offered if they wanted to buy the land, if they would pay me the difference and I could pay what I owed.
Q. What difference?
A. I don't remember what difference. I paid $5,000 on it and I owed them some. I like to get what I put on it anyhow.
Q. You was trying to get your money back?
A. Yes, sir.

71 Q. Didn't you know that the land values in Texas were not so large then as they had been a year or two before?
A. No, sir, I don't. I believe it was worth more money than when I bought.
Q. It wasn't discussed there in Mr. Martin's office at the time the deeds was made that the values had fallen off 50%, since the time you had bought?
A. No, sir.
Q. It wasn't agreed by you and Labit there in Martin's presence that the land at that time was not worth more than the mortgages on it?
A. No, sir.
Q. Mr. Benoit at the time that Labit executed the deed to you and you executed the deed to Scharff, Mr. Scharff gave Mr. Labit a check for the amount that Labit had paid on the land for interest, taxes, did he not?
A. Yes, sir.
Q. It had been agreed before either one of the deeds were prepared that Mr. Scharff was to pay Labit the amount of money that he paid on interest and taxes?
A. Yes, sir.
Q. That was a portion of the consideration mentioned in the deed as cash received and note assumed?
A. How did not say that.

Q. The money that Scharff paid Labit was a portion of the $7,200, mentioned in the deed as cash paid and debts assumed?

A. Well, I don't remember how it was. They talked about it. I know he paid Labit for what he had spent on the land. I know that, but I cannot tell you how they put that on the deed?

Q. You don't know how it was put on the deed?

A. No, sir, I don't.

Q. Mr. Benoit when was it that you went to Mr. Scharff with this letter of Mr. Fauroux's?

A. I cannot tell you when that——.

Q. You don't know?

A. No. I don't remember what it is.

72 Q. In the proposition that Mr. Robinson made you, how was Mr. Labit's money to be paid back?

A. Well, I don't remember how that's fix-. Mr. McCoy.

Q. Was that mentioned between you and Mr. Robinson?

A. I guess so.

Q. You don't remember whether it was or not?

A. No, sir.

By the COURT:

Q. Mr. Benoit the time that you made this deal with Mr. Scharff did you know that you would not be able to pay your debts?

A. Well, I did not know exactly, but I felt like I could not pay my debts.

Q. Were you thinking about going in bankruptcy then?

A. No, sir, I never thought about that. No, sir.

Q. Did Mr. Martin say that he would release you from that note and look to Mr. Scharff for it?

A. No, sir, when Scharff take the land he did not tell me, he did not say he would release me, but he said that Scharff would pay it.

Q. He did not tell you that he would release you?

A. No, sir. Mr. Scharff agreed to pay when he would sell the land.

Q. You say you went to Mr. Goudeau to see about this sale, did you say that you went to Mr. Goudeau to see about this sale to Scharff?

A. Yes, sir.

Q. What did you want to do?

A. Well, I wanted to see. I asked Mr. Goudeau and Asked Mr. Scharff if he thought to keep the land.

Q. Did you want to get a part of it and back——?

A. Yes, sir.

Q. Is that what you went for?

A. Yes, sir.

Q. You wanted Mr. Goudeau to sue for you?

A. No, for my creditors.

Q. For the Bankrupt Court?

A. Yes, sir.

Q. Did you tell him you had this cattle?

A. Yes, sir.

Q. Has he sued for them too?
A. No, I don't think.

Redirect examination by Mr. GOUDEAU:

Q. When Mr. Robinson spoke to you, or when you had that conversation with him about making that exchange of that land did he advise you he would advance you more money if you needed it?
A. Yes, sir.
Q. Now, why did you transfer that land to Labit and how much did he pay you?
A. When I transferred that half interest?
Q. Yes?
A. Not a cent.
Q. What was the consideration?
A. $6,000. I let him have it for what I paid for it.
Q. That was the balance that was due on the land?
A. Yes, sir.
Q. And then when he transferred it back to you the amount he paid $513.35 was what he had paid on the unpaid balance—interest and taxes?
A. Yes, sir.
Q. Then Labit had paid nothing on the principal indebtedness?
A. No, sir.
Q. Then as I understand it the consideration that Labit was to pay was the assuming of the unpaid balance due on the land?
A. Yes, sir.

Witness excused.
Court recessed until 2 P. M.

Mr. LEONARD CORBELLO, being first duly sworn by the Judge on behalf of the plaintiff, testified as follows:

Direct examination by Mr. GOUDEAU:

Q. Mr. Corbello what *possession* did you hold in this Parish in the year 1908?
A. Deputy Sheriff.
Q. Are you acquainted with Edward Scharff one of the defendants in this case?
A. Yes, sir, I am.
Q. Mr. Colbello, in your capacity as deputy sheriff, in 1908, did you have occasion to serve Mr. Scharff with a copy of petition in a suit brought against him by J. A. Kinder, having the purpose of annulling the sale of this land?
A. I don't remember exactly the date. If I had my book I could be able to say, but I served some papers on him. I don't remember the date exactly, but I served them.
Q. Now when you served these papers on him did Mr. Scharff tell you anything in regard to this transfer of land between him and Leopha Benoit?
A. Well he did a little of it, yes, sir.

Q. Do you remember the substance of what he said?

A. Well, I can remember a few words, but that would be a good long while for me to remember a thing.

Q. Do you remember the substance of the conversation?

A. Yes, sir.

Q. Just tell the court what it was.

A. When I served the papers on Mr. Scharff he was sitting down on the steps of the First National Bank. He said "Corbello what do you think is the matter with Cleopha"? I say I don't know, Mr. Scharff. I say "how is that"? He says "this thing is settled. This matter wasn't sold." He said "this matter wasn't sold."

Q. This matter?

A. Yes, sir, about this land proposition. The papers I was serving on him then. I expect that's what he meant. I did not ask him any questions. He said "I have not sold the land and he said "I cannot settle with Mr. Benoit," and just that minute Mr. H. A. Davidson stepped up and I left. I did not want to talk any business.

Q. Did he tell you whether or not Mr. Benoit had any interest in the land?

75 A. No, sir, he did not tell me.

Q. Did he tell you whether or not he was to give Mr Benoit any of the profits made on the land after it was sold?

A. No, sir, I would not say because I don't remember exactly if he has told me or not. I would not say.

Q. Just repeat the conversation as well as you can remember it now what he said?

A. About what?

Q. About when you served the papers on him?

A. Well just that minute, when I served the papers on him, he says "Corbello," he says "what's the matter with Cleopha"? I says "I don't know." "Well" he said "this matter is not settled yet and here he stamps on me."

Q. Well, was that all he said?

A. Yes, sir, that's all he told me. Then Mr. Albert Davidson stepped up and they started talking business and I did not ask him any questions because it was not my business. I was supposed to serve the papers and make my returns.

Q. You say you don't remember whether or not there was anything said that he could settle until the land was sold?

A. I don't remember. I cannot say.

Witness consigned.

By Mr. McCoy: No question.

Witness excused.

Mr. Lee E. Robinson, being first duly sworn by the Judge on behalf of plaintiff, testified as follows:

Direct examination by Mr. Goudeau:

Q. Where do you reside Mr. Robinson?

A. At Welsh.

2. Are you acquainted with Edward Scharff and Cleopha Benoit, defendants in this case?

A. Yes, sir.

Q. Are you the same L. E. Robinson who gave your testimony before the Referee on the 31st day of October 1908?

. I gave my testimony before the Referee, but I don't remember date.

. Mr. Robinson are you familiar with the lands in controversy which was formerly owned by Cleopha Benoit in Texas?

. I am familiar with a tract of land that he formerly owned in agorda County.

. Sixteen hundred acres?

. Sixteen hundred acres.

. In the Spring of 1904 did you ever have a conversation with Robinson in regard to trading or buying this land?

. Yes, sir.

. Will you tell the Court what the conversation that you had him and what was the consideration and what land you were al with him?

. Cleopha Benoit had some time previous to that bought this. Still some time previous to this he had sold a half interest in o the Labit Bros., one of the Labits lived in Welsh. Mr. Benoit in business, small business and the Labit Bros. were in the er business. Both of the parties became somewhat embarrassed ncially and the Labits were unable to meet their payment which had assumed on the land and Benoit was unable to make the ent. He came to me, as he said, to help him out. I had ously helped him out some years before that when he was r of about 600 acres on Bayou Chene, and a number of his ors were about to commence suits and I had made a loan for and taken up the smaller claims, and in that way enabled him d all of his property which he sold for about $25,000. This y he had lost in business in Welsh and was getting hard up. I him that if I could go and look at the land, and if it suited would make him a proposition. I made the trip over there, ined the land and came back home and made him a proposition. I offered to assume the mortgage indebtedness against his 1600 acres which then amounted to a little more than perhaps $6,000, and to give him in exchange about four red acres of my land on Bayou Chene.

Calcasieu Parish?

Yes, sir.

ing my land at $30.00 an acre and taking his land in on the f $10 an acre. He would then owe me a balance of $2,000 200 or in that neighborhood, for which I offered him very ble terms. I do not remember, but I think it was about year. He thought very favorable of the proposition, and suggestion we came over here to Lake Charles one evening nsulted with his attorney, Mr. Gorham. Mr. Gorham advised make the trade. We went back to Welsh, and a few days han that I asked him when we could close up and he told

me he was figuring with another party that he thought more favorable, and a few days later than that he told me that Mr. Scharff had made him a proposition that he considered more favorable. I asked him what the proposition was and he told me that Mr. Scharff was to take a deed to the property and was to hold it and when the land was sold Mr. Scharff was to receive payment back for the account which he had —

By Mr. McCoy: Object to this unless Scharff was present.

By the Court: Let it go in for what it is worth.

—to pay on the land and whatever it sold for the balance was to be divided between them. So my trade with Benoit dropped.

By Mr. Goudeau:

Q. There was an indebtedness of approximately—

A. $6,000.

Q. Due on the land?

A. On the Texas land.

Q. And you offered him on the trade $10 an acre?

A. $10 an acre.

Q. Which would have left him an equity in the land of $10,000?

A. Yes, sir.

Q. And the land you was offering him at $30 an acre that time was a fair valuation?

78 A. At the time it was a fair valuation.

Q. You had sold Cleophe Benoit's farm—four hundred -one odd acres —

A. Yes, sir, a short time before that.

Q. How far was that land from the land you were offering in trade?

A. Just a little distance, perhaps three quarters of a mile.

Q. Do you remember the price you sold that Benoit land for?

By Mr. McCoy: Objected to unless it was sold at the same time when the market of land was in the same condition.

By the Court: Let the evidence go in.

A. If I remember right the Benoit place was sold for $25.00 that was not considered as good a piece of property as mine. There was a gully running through it which cut it up pretty badly. The improvements were not considered very valuable.

By the Court:

Q. When was it sold?

A. I cannot give you the date.

Q. Before or after?

A. Before.

Q. Long before?

A. Well, it was some time before. I don't remember the date of it. Yes, sir, some time, it must have been three years, I think, Judge.

By Mr. GOLDEAU

Q. How long have you been in the real estate business, Mr. Robinson?

A. Off and on for twenty-two years.

Q. You are engaged in the real estate business now?

A. Yes, sir, when there is anything doing.

Q. Was the prices of land at the time that you sold the Benoit farm and the time that you offered him this trade different or about the same thing?

A. I cannot answer that. I don't just remember. I have seen lands fluctuate in value here three times and then vary 50%, and I cannot just remember what the condition was when that was sold.

Q. Your land at $30 an acre was considered a fair cash value?

A. Fair cash value.

Q. You would not have considered anything less from anybody else?

A. If it would have been a strictly cash dealing, there is always a discount.

Q. But you would not have made a material difference?

A. Not a material difference, possibly $1.00 or $2.00.

Q. And you made this proposition to Benoit after you examined his land?

A. The Texas land?

Q. Yes, sir.

A. Yes, sir.

Q. That was just previous to his transfer to Scharff?

A. Yes, sir, something like two weeks.

Q. Were there any railroads at or near this land at that time Mr. ——?

A. They had completed the extension of the line from [illegible] to a point then called Midfield where they were then constructing the line. They were constructing the line from Midfield South to Palacios, but they were not running trains over that part of the line at that time except you could get a little accomodation from the work train, but I made it on a drive across the country from El Campo.

Q. How did you find the condition of the real estate market in Texas at that time?

A. Everybody was what I find flighty, they were picturing—they had pictures of visions of increase of price on everything of that kind on account of railroads. There was another railroad project running East and West from this, which was said to be surveyed across this tract of land, and the real estate men at Palacios and all of these points there were pointing out about the valuations of the land when the railroad should be put.

Q. Just at that time the real estate had an upward tendency?

A. That's the way it looked to me at that time.

By the Court:

Q. Were you influenced by these railroad prospects——

A. How is that?

Q. In fixing the value of that land were you influenced by the railroad?

A. From what I saw being built I was. This railroad that was then constructed ran about four or five miles from that land. I was not influenced any on account of other lines, but that railroad was actually being built. The steel was being put on the ground.

By Mr. Goudeau:

Q. That railroad that you mention passed through Blessing, Texas, on its way to Palacios?

A. I believe that's the name of one of these stations.

Q. Blessing is about two miles from that land?

A. I think that it is a little more than that. Perhaps three or four miles, possibly five miles from the land.

Q. And after Mr. Benoit had come to Lake Charles with you and had agreed to trade and he went back and stated to you that the proposition that Mr. Scruth had made was better for him?

A. Yes, the second time I saw him, two or three days after we went back home I asked him when I could close up and he gave me off some indifferent reply, and a few days later than that he told me he had a better proposition and I asked him from whom and he told me and then told me the proposition.

By the Court:

Q. Mr. Robinson what would you estimate the cash value of that land at that time?

A. At that time the cash value of that land would be possibly $60.00 an acre, that's the way I estimated it.

Q. Between $11,000 and $15,000?

A. Yes, sir, around that.

Now, these values you understand, are taken from what $1 other lands were quoted to me in the same vicinity and statements from real estate men who were handling these properties. That's the only thing I had to guide me in my estimates of value.

By Mr. Goudeau:

Q. And also your experience as a real estate man?

A. Well, that would perhaps help a little.

Cross-examination by Mr. McCoy:

Q. Mr. Robinson in 1904 the price of rice in this locality was very low, wasn't it?

A. I can't tell you McCoy. I forgot the years. We had several low prices.

Q. That was the year it was selling for seventy five cents and one dollar a barrel?

A. I don't remember McCoy whether it was the year or not.
Q. You remember that year, do you not?
A. I very well remember it.
Q. You know there were but little land being sold then?
A. That's true.
Q. You don't recall any land being sold in the vicinity of Welsh at $30 an acre during the year rice was $1.00 a barrel, or less?
A. I have owned the canal South of Welsh since 1899. It's when I built it, and I do not think that there was a year between 1899 and 1905 or 1906 perhaps, that I did not sell land on that canal and I do not remember to have ever sold a piece of land on that canal for less money than $30 per acre.
Q. Didn't you sell Benoit's at $25.00?
A. That wasn't my land.
Q. Most of your lands were sold on crop payment plans?
A. Most of them were.
Q. You can always get a better price for them that way than you can otherwise?
A. As a rule.

Q. Mr. Robinson you owned a piece of land in Texas in 1909 or 1910 which you sold to Mr. Dyke, didn't you?

By Mr. Goudeau: Objected to as irrelevant and immaterial to the issues of this case.
By the Court: Objection overruled.

A. It was later than that McCoy. I acquired that land——

By Mr. Goudeau: Objected to for the reason that the deed would be the best evidence.

A. I acquired a thousand acres of land in Wharton County about the year 1901. I think it was the year 1901. I sold this land to Mr. Dyke the following year after I acquired it. I base this statement upon this fact. I operated the canal south of Welsh in the year 1899 I think. I operated the canal five years that made 1904. I then took this thousand acres of land from E. M. Clark as a part of the purchase price for my canal, so it must have been 1904 that I acquired the Wharton County land, but I sold the land you refer to the following year.
Q. After you acquired?
A. I think I acquired it in December 1908 and I sold it — Mr. Dyke the following Spring.
Q. You subsequently had to foreclose that mortgage and take it back?
A. Yes, sir.
Q. He was unable to pay for it?
A. Through a chain of misfortune.
Q. You know of other people in the vicinity of Welsh that lost money in Texas?

By Mr. Goudeau: Objected to as irrelevant and immaterial.
By the Court: Objection sustained.

By Mr. McCoy:

Q. Mr. — who formerly resided near Welsh bought some
83 land in Texas about the same time Mr. Benoit acquired this land which he was unable to pay the purchase price and it was sold out during the year 1904 and he lost his land, did he not?

By Mr. Goudeau: Objected to as irrelevant and immaterial, not affecting the issues of this case.

By the Court: The objection is sustained.

By Mr. McCoy:

Q. Mr. Robinson you were president of the First National Bank of Welsh in 1904?

A. I cannot tell you the date. I was from the date of its organization to the first of January of this year.

Q. Was that bank running at the time Mr. Labit acquired this half interest in the land from Benoit?

A. I think it was.

Q. Mr. Labit was indebted to the Bank at the time this land was sold to Scharff?

By Mr. Goudeau: Objected to as irrelevant and immaterial.

By the Court: Let it go in.

A. Mr. Labit was in the lumber business at Welsh at that time, and he was indebted to the Bank to a greater or less extent the most of the time.

By Mr. McCoy:

Q. Mr. Robinson as President of the Bank you talked to Mr. Labit about the Benoit indebtedness which he had assumed and purchased a half interest in that land and urged the necessity upon him of getting released from that indebtedness if he expected extension from the Bank?

By Mr. Goudeau: Same objection.

By the Court: Same ruling.

84 A. I do not think McCoy that we would put it quite that strong, it might have been understood to mean that, but we ever hardly come out in quite plain English as that, but the fact was Mr. Labit was not making any money in the business where he was, and it did not require much of a business man to see that he was unable to meet his payments unless some disposition of the land and it might be very natural for us to suggest that he unload.

Q. Mr. Robinson how long did you stay in Matagorda County at the time you went to look at this land?

A. I think I was there three days, McCoy.

Q. That was going into the situation?

A. Yes, sir.

Q. Did you go over the land or just over a portion of it?

A. I was pretty near over the land. There was part of this land that was timber which I did not go through. I went in the edge

of the timber, but I did not go through the timber, but I was all over the prairie portion of the country.

Q. Portion of the land is what they call black wa-low land, or white sand?

A. Part of it was black waxy bog wallow and part of it was a white sand—light sand. A portion of the prairie land was very fine and a portion of it was not very good.

Witness excused.

Mr. C. F. Carr being first duly sworn by the Judge, on behalf of plaintiff, testified as follows:

Direct examination by Mr. Gouraud:

Q. Mr. Carr where do you reside?

A. Welsh, La.

Q. Are you acquainted with the defendants Edward Scharff and Claudia Benoit?

A. Yes, sir.

Q. What business are you engaged in Mr. Carr?

A. Well, when there is anything doing I try to sell real estate. That's my business.

Q. How long have you been engaged in the real estate business?

A. About ten years.

Q. Mr. Carr subsequent to this sale of this land from Mr. Benoit to Mr. Scharff, did Mr. Benoit ever come to you and ask you to ascertain what was the price or value of this land?

A. You mean that was after the sale of Benoit from Scharff?

Q. Yes, sir.

A. Yes.

Q. What did you do?

A. I wrote a letter to real estate men in Palacios, Texas, and when the letter came back I handed it to Mr. Benoit. I read the letter to Mr. Benoit that I had received from the real estate party, and I am most positive I handed the letter to him.

Q. Do you remember at what price they said the land could be sold?

By Mr. McCoy: Objected to as the letter is the best evidence.

By the Court: Objection is sustained if the letter can be produced.

Q. You don't know where it is, Mr. Carr?

A. No, sir. I am most positive I gave the letter to Mr. Benoit. It was for his information that I was writing as I had nothing to do with the case, and I had no business with the letter. I am most positive I turned the letter to him. I read the letter to him because he could not read.

Q. Tell the Court——.

By Mr. McCoy: Object to that because it is an unsworn statement of some one who is not himself nor is the Court informed as to what his qualifications were, the mere statement in a letter as to what

By Mr. Goudeau:

Q. You remember what he said the land was worth at that time?

A. He said the land should be sold from $16,00 to $20,00 an acre that was the rate.

Q. You remember how long this was after the land had been sold to Scharff?

A. I don't remember when the land was transferred to Mr. Scharff.

Q. 1904?

A. I know this, that this letter was written after the transfer of the land from Benoit to Scharff and from the best of my knowledge it was two years—eighteen months or two years, that would make it 1906.

By the Court:

Q. Mr. Carr had Mr. Benoit gone into bankruptcy at that time?

A. Yes, sir, he had gone into bankruptcy.

By Mr. Goudeau:

Q. From your conversation with Mr. Benoit, and from his actions in the matter what impression did he leave on your mind as to the interest he had in this land?

By Mr. McCoy: Objected to as irrelevant and immaterial.

By the Court: Objection is sustained.

By Mr. Goudeau: The above question was asked for the purpose of showing that two years after Benoit had transferred this property to Scharff he came to Mr. Carr and asked him to get the price or value of this land, showing that Benoit still considered at that time that he had an interest in it and the purpose of the above question asked to Mr. Carr is to show that Benoit left the impression at that time that though he had parted with the land he was still claiming an interest in it.

87 By the Court: Objection is sustained.

By Mr. Goudeau:

Q. Did Mr. Benoit ever have any conversation with you at any other time in regard to this land after he had transferred it to Scharff or by which he was to get money out of this land or in any——?

By Mr. McCoy: Objected to that as any statement which Benoit made long after the transaction out of Scharff's hearing would not be binding on Scharff.

By the Court: Objection overruled. Let it go in for what it is worth.

A. Yes, sir.

Q. Can you state what that was?

A. Well, I was at that time in the real estate business. I was selling land at that time or about that time.

By the Court:

Q. What time?

A. Well, say 1906, 1908, 1909, very cheap as I thought. Mr. Benoit he came in the office, not only once, but he came there several times. He acted like—he talked like he wanted to buy land, and of course, he knew the country just as well as I did. I did not have to take him and show him the land. He knew all the vicinity where he lived. It was most of the North American Land & Timber Co.'s lands at that time but I was selling, and I enumerated several different tracts.

By the Court: Tell only what refers to this transaction.

He told me this—I will buy a piece of land if I can get Mr. Scharff to make the first payment. That's what he told me. That's all there was, but I did not sell him any land.

Cross-examination by Mr. McCoy:

Q. He did not say anything about buying land for his creditors that he owed in 1904, when he went in bankruptcy?

A. He did not say for whom he was buying it.

Q. He did not say anything about getting any money from Scharff to pay his creditors?

A. That's later than that.

Q. 1904 is when he went into bankruptcy. He did not say anything about getting some money from Scharff to pay his creditors?

A. No, sir.

Witness excused.

Mr. CHARLES FAUROUX, being first duly sworn by the Judge, testified as follows, on behalf of plaintiff:

Direct examination by Mr. GOURDEAU:

Q. Mr. Fauroux, where do you reside?

A. In Hayes, La.

Q. Are you acquainted with Cleophe Benoit and Edward Scharff, defendants in this case?

A. Yes, sir.

Q. What relation are you to Mr. Benoit?

A. Brother-in-law.

Q. How long have you known Mr. Scharff?

A. I know Mr. Scharff since, I believe 1889, something like that.

Q. Now Mr. Fauroux, about 1904, just previous to the time that Mr. Benoit went into bankruptcy, did you have any conversation with Mr. Benoit in relation to this land in Texas?

A. Yes, sir.

Scharff, I say maybe I got chance—I live in Texas—I got a chance to find somebody to buy I let you know or write," and I go on and come to Lake Charles with Cleopha and make voluntary bankruptcy—application for bankruptcy, and I go back to Texas. That's in 1906 man from Wharton County wrote me a letter. He say: Mr. Fauroux——

By Mr. McCoy: Object to that, Your Honor, as the letter is the best evidence, and not being a sworn statement.

By the Court: Objection sustained.

I got a letter from a man—Mr. Fleury & Branch, said to try to know Mr. Benoit want to sell the land——

By Mr. Goudeau:

Q. If Mr. Benoit want to sell his land?

A. If he want to sell his land, and if he want to sell his land I offer him $15. an acre and I take the letter and I send it to my brother-in-law and tell him to see Mr. Scharff and give him the letter. That's a good bargain for you that give you a chance to make little money—pay your creditors and have a little money to start again.

Q. That was in 1906?

A. Yes, sir.

Q. They offered $15 an acre for that?

A. Yes, sir.

Q. And you sent the letter to Mr. Benoit advising him to accept it?

A. Yes, sir.

Q. That conversation that you had with Mr. Scharff at the Bank, he was present, Mr. Scharff was there?

95] A. Yes, sir.

Q. And he acknowledged to you that Mr. Benoit was in bad financial condition?

A. Yes, sir. I told Cleopha that, I say "You got something in case you die—counter letter. I don't want to say Mr. Scharff play you dirty trick." I say "Mr. Scharff is a good friend to me and a good friend of you better get this up, better have some writing.

By the Court:

Q. You told him that in Mr. Scharff's presence?

A. No, sir, me and Cleopha together. It is better for you to have something in case Mr. Scharff die then you have your share or you die and Mr. Scharff get his share. I say "I am not afraid of Mr. Scharff, he is a good friend of me," he say "I trust Mr. Scharff" and Cleopha told me I want to talk to Charlie Martin for that and he spoke to Charlie Martin in my presence in the store, I remember well, and Mr. Charles Martin told him "not move nothing Cleopha, everything all right, Scharff treat you all right."

Q. He spoke to him about that counter letter?

A. Yes, Cleopha told him "you believe it is good for me to have

counter letter," and he said "I don't think that it is necessary for Scharff is all right. He is a friend of you and he treat you right."

Q. That was just before he went into Bankruptcy?

A. No, that time he be in bankruptcy and it is close in 1907. Me I told that because I know Scharff want do that, if you die as a business thing that's all. He cannot read and can't write that's all.

Cross-examination by Mr. McCoy.

Q. Mr. Fauroux, you was the one then that advised Cleopha to go into bankruptcy?

A. Yes, sir.

Q. Did you come over to Lake Charles with him?

A. Yes, sir, I go to bring him to the office myself.

Q. Was that after you had your talk with Mr. Scharff at
92 the bank or before?

A. Same night, or same evening I talk to Mr. Scharff what Cleopha got the money.

Q. $50 that Mr. Scharff let him have?

A. Yes, sir.

Q. You know whether Mr. Benoit paid that back?

A. Yes, sir, he paid that back.

Q. It was not at all uncommon for Cleopha to go and borrow a few dollars from Mr. Scharff for a number of years past—they had been good friends?

A. Been friends, sure.

Q. Frequently Mr. Scharff trusted him for small amounts?

A. I believe small amounts what he had the conversation with Mr. Scharff told me. You know he is a friend of Cleopha.

Q. And you used to live at Welsh yourself?

A. Yes, sir.

Q. Why did you leave Welsh and move to Houston?

A. I did not move from Louisiana to Houston, I moved from Crowley to Houston. Mr. Cleopha is in business in Welsh, I don't know nothing what kind of business. I know he got the money, that's all I know. The first thing I know he got nothing.

Q. Mr. Fauroux, did Mr. Benoit tell Mr. Scharff, in your presence there, to ask him this $50 that he was coming here to go into bankruptcy?

A. No, sir, he did not say nothing. He don't know nothing. I told him go into voluntary bankruptcy, and Cleopha not like that, but I gave that advice and I say that settles everything and that's what Cleopha told me for that land he passed Mr. Scharff, one day he got chance to sell that land to pay his creditors and he got a little money to put him on his feet again.

Q. Now, then, if I understand you, after Cleopha told Mr. Scharff he wanted to borrow the $50, and Mr. Scharff handed it to him, you then took up a conversation with Mr. Scharff in which Mr. Scharff told you frankly that he was going to keep that land and sell it and after he got his money back——

A. That's me. I am talking Cleopha told me. I say Mr. Scharff I am glad you going to pay the $6,000 that he pay on the land.

Q. Balance that he owes on the land?

A. Yes, sir. Say "that's a good thing for Cleopha, some day I might sell the land and divide the profit with Cleopha.

Q. That was said between you and Mr. Scharff about the land?

A. Yes, sir, just talking.

Q. That was all that was said about the land?

A. Yes, sir, I told him that I was glad to see that he had saved the land for Cleopha, and I know Mr. Cleopha and Mr. Scharff is a good friend.

Q. Mr. Fauroux you never talked to Mr. Scharff about the land ten after that night that you and Benoit saw him there at the bank?

A. To whom?

Q. Mr. Scharff?

A. Yes, sir, I see him many times in Welsh, and I say "you got chance to sell the land in Texas" and he say "there is no money now, better wait a little while.

Q. Somebody asked him if he sold the land?

A. I told him better sell the land now, he said "no, better wait a while, there will be more money" Cleopha told him "better sell now."

Q. You say Cleopha told him what?

A. To sell the land for $15.

Q. You were not present then?

A. No, I was not.

Q. Cleopha just told you about that?

A. I know.

Q. About his asking Scharff to sell it?

A. No, only one day Cleopha told Mr. Scharff that letter and I got answer from them because Scharff don't want to sell it, and few months after that I met Mr. Scharff and Cleopha in the street and I told the price of land in Texas is pretty good that's the time to sell it Cleopha and him to sell out and Mr. Scharff said "plenty of time—will be more money in two years more, that's all he told me and I don't write back.

Q. Mr. Fauroux was you present in the lawyer's office when Cleopha told the lawyer he wanted to go in bankruptcy?

A. Yes, sir, I was right there. He is no lawyer, Deputy Marshal, I know, some officer.

By Mr. GOLDMAN:

Q. United States Commissioner?

A. Yes, sir.

By Mr. McCOY:

Q. Mr. Cline—was it that prepared the schedule?

A. I forgot the name. He is a friend of me.

Q. Mr. Cline was it.

A. I don't know his name.

Q. His office is right in the next building?

A. Somewhere up -stairs.

Q. Mr. Fauroux, did you remain with Cleopha until he filed his schedule in bankruptcy?

A. No, sir.

Q. You heard him tell the lawyer what property he had?

A. No, sir, I told him the best way to make bankruptcy — voluntary bankruptcy — give away everything.

Q. You do not know then, whether Cleopha put in or not all his creditors?

A. No, sir, I do not.

Q. Well, Mr. Fauroux, how did it happen that you was advising Cleopha and Scharff to sell afterwards when you knew that Cleopha had gone into bankruptcy and ought to have turned everything to his creditors?

A. I tell him that two years after he make bankruptcy.

Q. Yes, but you knew that he ought to have turned any interest that he had in this land in bankruptcy?

A. I don't know nothing about that, that's all I know. It was very nice of Mr. Scharff to pay the balance due to save his land. He was very friendly. I don't know whether that go in bank-
95 ruptcy or not, and he is a fine man.

Q. You did not think that if Cleopha had an interest in that land it should have gone to his creditors?

A. No, sir, I did not know nothing about that. I told him to turn his store and land he had in Welsh, but the land in Texas I did not know because he was not through paying for it.

Redirect examination by Mr. Gottlieb.

Q. That conversation that you had with Mr. Scharff and Mr. Benoit about two years after this sale when you told him they had better sell that land? you said their land?

A. Yes, sir.

Q. Did Mr. Scharff at that time deny that Benoit had interest in it?

A. Yes, sir he know that he got interest.

Q. And he did not say that Cleopha did not have interest in it?

A. No, sir, he was a partner.

Q. He admitted that he was a partner?

A. Yes, sir.

Q. What was the conversation what you told, that Scharff said and what Cleopha said, as well as you remember?

A. That's all, I say, "you receive me letter a couple of months ago and you no give me no answer, and I believe that's a good price $15 an acre for your land in Texas, that's better sell out" what I told, like I said if you make a profit.

By the COURT:

What did Scharff say?
Better wait a little while the price be better.
What did Mr. Benoit say?
He did not say anything.
Did you refer to the land as Scharff land or Scharff & Benoit?
Scharff and Benoit at that time.

By Mr. McCoy:

Mr. Fauroux did you speak to Mr. Scharff – you better sell and in Texas?
No, I say you better sell your and Cleopha's land because I he had half interest—divide the profits.

Witness excused.

ntiff rests with the right to offer the testimony of Judge D. B. on, and to which defendant consents.

JAMES A. KINDER, called for the purpose of Cross Examina- nder the acts of the Legislature of 1908, being duly sworn d as follows:

Cross-examination by Mr. McCoy:

Mr. Kinder, you are the same James A. Kinder, the plaintiff case?
Yes, sir.
And also the same J. A. Kinder who was trustee of the bank- of Cleopha Benoit when it was originally filed?
That's the reason I am plaintiff.
You are the same man?
Yes, sir.
Mr. Kinder at the time that you were trustee, originally, what y represented you then?
Winston Overton.
Now Judge?
Now Judge.
did you cause him to make any investigation relative to the tion of the land which Benoit had made in Texas?
We made an investigation. We could not get anything at this the route, only a little surmise that such a thing had been We could get nothing definite and at the time I got a rumor ere was such a thing that had occurred, and it was late in the ings—the proceeds had been going on some time. I don't how long, and I told my attorney what I had heard and he an investigation which he continued for some time. I don't ber how long. It was a good while ago, and he spent some money. I don't remember how much, probably $25 or $30, and finally he reported to me that the investigation did not amount to anything; that he could not get anything tangible.

and that he did not believe there was an equity in it for the estate at that time.

Q. Mr. Kinder, this letter marked "D-11" is one of the letters that Mr. Overton received relative to that matter is it not?

A. I don't know. I cannot remember positively.

Q. That is one of the letters that Judge Overton received in that investigation?

A. I don't know.

Q. You don't know?

A. I don't remember ever having seen the letter before.

Q. Examine "D-11" and see if that was one of the letters?

A. No. I don't think I ever saw this letter before.

Q. Mr. Kinder what is it you heard about his selling land in Texas that caused you to make that investigation?

A. Somebody, I don't remember who it was, asked me if Benoit turned in that land that he had in Texas. I don't remember who it was, and I examined the schedule and I saw there was nothing with reference to lands in Texas. (All that is vague in my mind.) Whoever it was probably told me what country it was in and we started without any information in regard to it and I turned the matter over to my attorney, and he made the investigation and advised me it wasn't worth while to

Q. Did you ask Mr. Benoit anything about it?

A. No. I never asked Mr. Benoit anything about it that I remember of.

Q. After you found out that it was sold to Mr. Scharff, did you ask him about it?

A. No, sir.

Q. You are acquainted with Mr. Scharff?

A. Yes, sir.

Q. Have known him in the neighborhood of twenty-years?

A. In that neighborhood.

Q. Did you ever ask Mr. Martin, the Notary before whom the deed was passed?

98 A. I never found out who passed the deed. I never was able to ascertain anything at this end of the line everything was shut out.

Q. You could have easily found in the records of Matagorda County the name of the Notary before whom the deed was passed?

A. I supposed that my attorney would attend to that.

Q. Mr. Kinder was there anything about the Benoit bankruptcy which aroused your suspicion at all that there had been fraud committed?

A. Nothing except that land.

Q. You say that land, you mean the Texas land?

A. I mean the Texas land. Well, there was some other things too. I will say that there were other things we inquired into. There was a sale of some stock down there and we had a hearing or two before Judge Taylor in regard to stock that Mr. Benoit had sold and we had one or two hearings before General Taylor and the investigation proved that Mr. Benoit had sold the stock for his son.

Q. So, then if I understand you correctly, at that time you had a suspicion in your mind that there was something of a fraudulent nature regarding the sale of this Texas land?

A. All I could get was a little hint of this thing. I could not find a man in Welsh who would tell me anything about it.

Q. Did you ask Mr. Welsh, the cashier of the Bank there?

A. I don't remember. I know I talked with him considerable about that bankruptcy.

Q. He married a neice of yours?

A. Yes, sir, he married my niece.

Q. He was at that time cashier of the Welsh National Bank?

A. Cashier of one of the banks there. I had some money transactions there. Made sales there.

Q. Do you remember of ever talking to him about this land transaction?

A. No, I don't remember if I talked to him.

Q. When you was conducting the store there, selling it out at Welsh, you saw Mr. Scharff frequently?

A. I saw everybody there was in Welsh.

99 Q. Saw Mr. Scharff almost daily?

A. I presume so.

Q. You don't remember of ever talking to him about the land?

A. No, I don't remember who I talked to.

Q. Even after you had found out that Mr. Scharff had——?

A. I did not find out that Mr. Scharff bought out the land. I believe we found out later.

Q. Judge Overton told you that Mr. Scharff bought the land?

A. I think so, yes.

Q. You know Mr. Howard Labit?

A. No. I know him I suppose, but I don't remember——

Q. Charlie Martin you have known for a number of years?

A. I have known Charlie ever since he came to Welsh.

Q. 18 or 20 years?

A. Yes, sir.

Q. Mr. Kinder you never had Mr. Scharff nor Mr. Martin, nor Mr. Welsh nor Mr. Benoit summoned before the Referee in Bankruptcy and asked them about this land prior to the time when you were discharged as Trustee in the original appointment?

A. I did not know that Mr. Martin or Welsh knew anything about it.

Q. Did you have either one of these that I have mentioned summoned before the Referee and interrogate them?

A. No, sir, not at that time, for this reason that it seemed like one big community and they were all friends and would not tell anything about it. I don't remember the individuals who they were, but I questioned parties around Welsh and they would give me some evasive answer and walk off. I turned the matter over to my attorney and we kept it up until he said it was useless to spend any more money on an uncertainty. He said there might be an equity in it for the creditors and there might not. He said it was not worth while to spend any more money.

Mr. JAMES A. KINDER, interrogated on behalf of the
100 plaintiff, testified as follows:

By Mr. GOURDEAU:

Q. The estate was very small?

A. Yes, sir, the estate was very small, but there was very little goods in the store then.

Q. There was very little money to be spent in useless investigation?

A. There was no money to spend.

Q. When was it the first that you ascertained positively that the sale had been made as alleged by you in this petition?

A. When I ascertained that positively I think it was since the case was reopened. Yes, positively since the case was reopened.

Q. Was it at the examination of these witnesses?

A. At the examination of Martin and Benoit and somebody else.

Q. Gorham & Robinson.

A. Yes, sir.

Q. As soon as you found out or had sufficient reason to think that you had the evidence to prosecute this case did you make application to Judge Bearman to have this matter reopened?

A. Yes, sir.

Q. And you stated you were acting at the advice of your attorney when you ceased the original investigation?

A. Yes, sir. I would spend all there was in it if it had been me, but he was the lawyer.

Witness excused.

By Mr. McCOY: Offer in evidence the certified copy of the judgment of discharge of J. A. Kinder as Trustee of the bankruptcy of Cleophe Benoit, under date of June 28th, 1905, marked D-11.

By Mr. GOURDEAU: Objected to as irrelevant and immaterial.

By the COURT: Objection overruled.

101 By Mr. McCOY: Offer in evidence a certified copy of the judgment of discharge of Mr. Benoit from Bankruptcy under date of November 18th, 1905, marked "D-12".

By Mr. GOURDEAU: Same objection.

By the COURT: Same ruling.

By Mr. McCOY: Next offer in evidence an agreement of counsel marked "D-15".

Offer in evidence the deed from Jos. Gierst and wife to L. E. Ward, under date of November 21st, 1901, with leave to substitute certified copy, marked "D-16".

By Mr. GOURDEAU: Objected to as irrelevant and immaterial as to the issues of this case.

By the COURT: Objection overruled.

By Mr. McCOY: Offer in evidence a deed from L. E. Ward and wife to Cleophe Benoit, under date November 21st, 1901, marked "D-17" with leave to substitute certified copy.

Next offer in evidence a deed from Cleophe Benoit and wife to Frank C. Labit and J. H. Labit, under date of October 6th, 1902, with leave to substitute certified copy, marked "D-18".

We next offer in evidence the deed from F. C. Labat and wife and J. B. Labat and wife to Cleophe Benoit, under date May 24th, 1901, with leave to substitute certified copy, marked "D-19".

Offer in evidence lease deed from Martha E. Gerst, herself, and as administratrix of the estate of Jos. Gerst, to L. E. Ward, under date of November 17th, 1865, marked "D-20".

By Mr. Gouraud: Objected to as irrelevant and immaterial.

By the Court: Objection overruled.

Mrs. I. M. Abbott, being duly affirmed by the Judge, testified as follows, on behalf of Defendant:

Direct examination by Mr. McCoy

Q. Mrs. Abbott did you own any land in Matagorda County, Texas in the year 1901?

A. Yes, sir.

By Mr. Gouraud: Objected to as irrelevant and immaterial to the issues of this case, and have no bearing on the issues of this case, shall?

By the Court: Objection overruled.

By Mr. McCoy:

Q. How many acres did you own there Mrs. Abbott?

A. 1,115.

By Mr. Gouraud: We wish to urge this as a general objection to the testimony of this witness, as it is irrelevant and immaterial to the issues of this case, that it has no connection whatever, and that the fact that she owned lands in Texas makes no difference and it cannot affect the issues of this case, that the issue of this case is to ascertain whether or not there was an illegal agreement entered into between the defendants, Schaeuf and Benoit to defraud defraud, or hinder the payment of Benoit's creditors, and the fact that she owned property in Texas has no bearing in this case.

By the Court: Objection is overruled. The Court being of the opinion that the value of the property is a factor in determining whether there is fraud or not. And this ruling is made general.

By Mr. Gouraud: We offer the additional objection for the reason that it is shown that in Matagorda County the soils are different even in the same tracts as in this tract, where some parts are worth $25.00 an acre and the tract adjoining is only worth $1.00 an acre.

By the Court: Let the objection go to the effect.

By Mr. McCoy:

Q. What was the character of your land?

A. Prairie land.

Q. Black soil?

A. Yes, it was black soil.

103 Q. Mrs. Abbott did you make any efforts to sell that land during the year 1904?

A. Yes, sir.

By Mr. Goudeau: Object to that because it is shown by the deed from Ward to Benoit that he had no trouble in getting $7.50 an acre for the tract, when he sold, and the fact that she was unsuccessful is no criterion.

By the Court: Objection overruled.

By Mr. McCoy:

Q. Mrs. Abbott why was it that you were making efforts to sell your land at that time?

A. Well, I paid all I owed on it but $1,000, and they wrote me if I did not pay the other $1,000, they would foreclose.

Q. Did you make any trips to Matagorda County in effort to try and sell that land?

A. Yes, sir, I made three or four.

Q. Were you able to sell it for enough to pay the $1,000?

A. No, sir.

Q. What became of it?

A. It went back to the people I bought it from.

Q. Under foreclosure?

A. Yes, sir.

Witness consigned.

By Mr. Goudeau: No question.

Witness excused.

By Mr. McCoy: Next offer in evidence the release deed from L. E. Ward and wife to Cleophe Benoit under date of May 18th, 1905, marked "D-21."

104 By Mr. Goudeau: Objected to as irrelevant and immaterial.

By the Court: Objection overruled.

By Mr. McCoy: Next offer in evidence deed from F. C. Labit and wife and J. H. Labit and wife to Cleophe Benoit, under date Sept. 12th, 1905, marked "D-22."

By Mr. Goudeau: Same objection.

By the Court: Same ruling.

By Mr. McCoy: Next offer in evidence the deposition of John L. Logan, taken before W. C. Carpenter, Notary Public, under date the 29th day of April, 1910. Marked "D-23."

By Mr. Goudeau: I wish to urge against introduction of all these depositions the same objections that are urged in the depositions before making the cross interrogatories, and ask that the Court make this objection stand as a general objection.

The depositions were then read by Mr. McCoy.

By the Court: The objection to interrogatory number two — made a general objection to all questions of the same kind is overruled. The Court being of the opinion that the value of the land is material in determining the question of value.

By the COURT: The objection to interrogatory number thirteen is sustained. The objection to fourteen, fifteen and sixteen is sustained.

The objections *is overruled* to interrogatory number seventeen to twenty-seven are overruled as going to the effect.

By Mr. McCOY: Next offer in evidence the deposition of Jas. H. Logan, taken before W. C. Carpenter, Notary Public, on the 22nd day of April, 1910, marked "D-24."

Counsel reads depositions.

By the COURT: The objections to the testimony of Jas. H. Logan are ruled upon as those of J. E. Logan, the same rulings to the same objections, and the testimony admitted.

By Mr. McCOY: Next offer in evidence the deposition of J. E. Pierce, taken before W. C. Carpenter, Notary Public, Matagorda County, Texas, taken the 30th day of April, 1910 marked "D-25."

Offer in evidence the deposition of Edward Bagley and P. J. Poole, taken under commission and interrogatories by W. D. Wilson, Notary Public, Matagorda County, Texas, on the 25th day of April, 1910, marked "D-26."

By the COURT: Same ruling to the objections to these interrogatories as were given to the objections of the other testimony.

By Mr. McCOY: Next offer in evidence the deposition of Carl Fisk, taken before E. G. Brooks, Notary Public of Wharton County, Texas, on the 26th day of April, 1910, Marked "D-27."

By Mr. GOUDEAU: Same objections.

By the COURT: Same rulings are made to this testimony as were made to the other.

By Mr. McCOY: Next offer in evidence the depositions of E. E. Ward, taken before John O. Rolliott, Notary Public, of Jackson County Texas, under commission and interrogatories, on the 25th day of April, 1910, marked "D-28."

By the COURT: Same rulings are given to the objections to the interrogatories of Mr. Ward that was made to the others.

Court then adjourned until tomorrow morning, May 4th, 1910.

On Wednesday Morning, May 4th, 1910, Court met pursuant to adjournment, His Honor, W. F. Schwing, Judge ad Hoc, and the taking of evidence was resumed in the above matter.

Judge D. B. GORHAM, being duly called and sworn by the Judge, testified as follows, on behalf of Plaintiff: (As per agreement hereinabove set forth.)

Direct examination by Mr. GOUDEAU:

Q. Judge Gorham you are an attorney practicing at this bar?

A. Yes, sir.

Q. How long have you been practicing?

A. About 23 or 24 years, something along there. Practic[illegible] altogether about 10 years.

Q. Are you acquainted with Cleophas Benoit?

Q. And Mr. Edward Scharff?

A. No, I don't think I ever saw Mr. Scharff until I was introduced to him by Mr. McCoy the other day. I knew there was such a man by the name of Scharff who did business in Welsh, but I had never met him.

107

Q. You are the same Judge Gorham who testified ——?

A. Yes, sir.

Q. Before the Referee?

A. Yes, sir, and that testimony is just exactly correct. You can take it.

Q. Well, did Cleopha consult you regarding the sale, or proposed sale of the land that he was to make, in Matagorda County, Texas?

By Mr. McCoy: Objected to as any statement made by Benoit to the witness outside of the presence of Scharff would not be binding upon Scharff, this to be general.

By the COURT: The objection is ordered to be made general and as such is overruled.

A. I will state that some time, I forget the exact date now, I was in the town of Welsh and Mr. Benoit came to me and seemed to be in a great deal of trouble. He asked me advice about certain matters which were giving him a good deal of bother, and the substance of the conversation, as distinctly as I can recall it is as follows: He was indebted to Mr. Scharff, or Scharff Bros., I don't know which, between $800 and $1,000. I don't remember the exact amount. He said that Mr. Scharff wanted him to give him a bill of sale to a large tract of land he had in Texas, 1,000 acres I believe, something like that, for which he had paid $12,000, $6,000 cash, and there was still due $6,000, for which there was a vendor's lien on the land to secure the same; that Scharff was pressing him for security or settlement of the claim which he had against him. Benoit said that he did not want to take a mortgage—a second mortgage, as he

Cleopha said he would give him upon that tract of land, as

108

he did not like second mortgage; that he wanted a straight sale. Well, I remarked to him: I advised him: Cleopha, you always called him by his first name: don't you do that, or if you do be dead certain to have a counter letter going to show that the purported sale is not in point of fact a sale, but a security given to secure the debt due by you to Scharff. I understood he would follow my advice, I thought. I did not know there had been any sale made to Scharff in the matter, never saw the deed, nor consulted me any more. He left me after getting my good advice, he went to other lawyer, I don't know where. This is all I know about the case.

Q. Do you now remember Judge how long after this conversation that he went into bankruptcy?

A. Well, I cannot exactly say. The time did not impress me very much. The conversation impressed me because I knew it was good advice. I knew that if he did not get a counter letter and follow my advice he would get in a trap and I told him so. My impression is that it wasn't very long after. I cannot give date

Q. It was soon after?

A. I cannot say. I don't know anything about the exact date.

Q. Now, I hand you your testimony to refresh your memory, and ask you if you used these words to Benoit when giving him this deed, and if so please state what it is?

A. I certainly used this language. I will now state what I said. I said "Cleophi to make this sale to satisfy Scharff's claim be sure to take a counter letter that will show exactly what the transaction is or else if you don't you will put your hand in a lion's mouth." words to that effect. I did not know Mr. Scharff, but I knew all men under the same circumstances generally would take advantage of all he has.

Cross-examination by Mr. McCoy

Q. Mr. Scharff was not present during that conversation was he?

A. I told you I did not know Mr. Scharff at that time. I knew there was a man by the name of Scharff concerned, but I did not know him at the time. If Mr. Scharff had been with Mr. Benoit I would have made up the counter letter right then and there.

Q. That conversation that you have testified about was in Welsh and not in Lake Charles?

A. I don't think it was in Lake Charles. I think I went to Welsh on business and he took advantage of my presence.

Q. Capt. Gorham you are positive that the debt which Benoit told you that Scharff was wanting a deed to secure was an unsecured debt?

A. Well now, Mr. McCoy, I could only remember in substance that he said Mr. Scharff had a claim against him, whether it was secured or unsecured I don't know, but he had a claim against him which he wanted secured with this land. I don't remember about things that happened years ago. That must have been about five or six years ago.

Q. Certain at at that time Benoit was not owing Scharff any debt which Scharff was pressing for security, could it be possible that it was some other man that Benoit was asking you about except Scharff and that you got the names mixed?

A. I don't think, because he told me he was a Jew and that drew my attention particularly to the nationality more than to the individual because I did not know Mr. Scharff at all.

By the Court

Q. Judge did Mr. Benoit tell you that any money was to be paid to him by Mr. Scharff?

A. Not a cent at all except to secure that debt, that's all I remember at the time.

Q. Did he speak about assuming another debt?

A. No, he said this that I was willing to sell to Mr. Scharff at a reasonable price, he assuming the mortgage and practically getting his money out of it, but I don't know what he said. I know there was good equity in the land because it was well located and in a section of Texas where the lands were increasing in value all the

Q. Explain why there would be no equity if the land was sold at forced sale?

A. In favor of the creditors?

Q. Yes, sir?

A. That was simply my conclusion, in other words, at that time I was under the impression or belief that lands were deteriorating in value, and if I mistake not it was on account of the crop conditions.

By the COURT:

Q. On account of what?

A. Crop conditions. Furthermore, I knew that then, or felt that there would be considerable litigation in recovering the land. I saw that there were mortgages on the land which I believed to be good mortgages, and I thought that after the expense of the litigation were paid and after the land was sold at forced sale and the mortgage indebtedness paid, which I thought to be a valid indebtedness, that there would be little or nothing for the creditors, in other words, that it was scarcely worth while to make the attack. I got no further than that.

By Mr. McCOY:

Q. You did not summons Mr. Scharff nor Mr. Benoit nor Mr. Martin, the notary before whom the act was passed, or anyone else before the Referee and examined them under the provisions of the bankrupt act?

A. It is my recollection and impression that I did not. It seems to me that I had some examination in the bankruptcy concerning other matters, but I don't think concerning this. I consulted with the Trustee, Judge Kinder, on several occasions concerning the matter.

Q. And with Gen. Taylor, who was the referee?

413 A. Yes, if I mistake not he gave me his verbal consent to drop the matter, at least approved our proceeding no further at that time. I cannot say that it was abandoned or subsequently dropped but we proceeded no further at that time. It was considered bad for the creditors to do so.

Cross-examination by Mr. GOUDEAU:

Q. Now Judge, in reaching your conclusion as to the value of the equity that were against the land, were they your own private opinion?

A. My own private opinion. Now, I may have gotten some information from Texas, and I have an idea, and a dim impression, that one of the things that guided me in forming that impression was the amount of the consideration of the sale from Mr. Benoit to Mr. Scharff, which I took, whether it was a simulated sale or not, to represent what the parties considered a fair consideration for the land.

Q. In the event that that consideration was not fulfilled, it not

being correctly stated, you might have reached a different conclusion?

A. Yes, I might reach a different conclusion. I acted only on the lights that were before me at that time.

Q. And with these lights before you that you have stated you advised that no proceedings be taken in the matter?

A. Yes, sir, and no proceedings were taken in the matter.

Q. And you did that because, under the circumstances, you thought it best for the creditors?

A. Best for the creditors. In other words, that I thought that they would get nothing out of it, even if they were successful in setting aside the sale, still after this mortgage debt was paid and the cost of the litigation, including the attorneys' fees were paid, that there would be little or nothing for them.

111 Q. The estate was very small anyway?

A. Yes, it was in bad condition.

By the Court:

Q. When you were investigating this matter was it upon any information which you received or any charge that there was fraud or sale within the four months?

A. I will say that I did not go very far into that; that from the surrounding circumstances that my impression was that, at the time that the sale was susceptible to attack, in other words, the surrounding circumstances lead me to believe that in the event that there would be sufficient ground that it would be my duty as attorney to ascertain whether or not the evidence could be produced that would set the sale aside. In other words, it looked to me on the surface as if it was susceptible of attack. Of course, I may have been in error in this conclusion.

Q. I want to ascertain whether or not at the time you were investigating the matter if you had any evidence before you to lead you to conclude that it was not a bona fide sale?

A. My impression was that it was a simulated sale. I had no evidence. My impression was simply that it was a simulation sale gathered from surrounding circumstances. I don't recall of ever having thought that it was made as security for indebtedness.

Q. You had no intimation, or had you any intimation or information as to whether this was a transfer with the intention of giving a preference from Mr. Benoit to Mr. Scharff?

A. None.

Q. Then you had no knowledge of any fraud of that kind committed?

115 A. I had no knowledge of it. In fact, to state it clearly, when I found out the existence of this mortgage on the land that were stated in the letter written me from Texas, and concerning which I was questioned by Mr. McCoy, I dropped the matter without investigating to find whether fraud existed in reality, or whether or not I could set it aside. My impression simply being that it was susceptible to attack, in other words, the attorney, under the circum-

stances was to advise the trustee whether or not the evidence could be obtained to set aside the transfer.

Q. There is a plea of prescription and there is a charge of fraud in the transfer, now the question what I want to ascertain from you is whether you had any such knowledge communicated to the trustee such knowledge of the transaction as would be to the knowledge of the referee at the *last* time of value?

A. I will answer that as plainly as I possibly can. I made no investigation to learn whether there was or was not fraud in the transaction. I felt that it was susceptible of attack, and I felt this largely because Mr. Benoit and Mr. Scharff resided in the Parish of Calcasieu and the land was situated in Texas, and the consideration seemed to be large and I doubted whether or not Mr. Scharff would buy land costing as much as that seemed to cost, situated in the state of Texas, and especially as I did not know at that time or before that Mr. Scharff was a man of considerable means though I knew he was a man of ordinary means, or at least believed so. In other words, I thought he would keep his money over here instead of going to Texas with it under the circumstances. I gave my impression to Mr. Taylor and while I thought probably the sale was susceptible to attack because of the surrounding circumstances, yet I did not feel as if the creditors were gaining anything by it even though we should succeed in setting it aside.

Q. Then at the time you did not have the knowledge of sufficient evidence to have it set aside?

A. No, sir, I did not have sufficient evidence to set it aside at that time. In other words, if this mortgage had not existed on the land I would have asked the trustee to make investigations and find out whether or not the evidence could be had upon which my suspicions could be verified, or in other words, proved to be correct and well founded.

By Mr. GOLDEAU:

Q. Judge do you know Mr. Lee Robinson of Welsh?

A. Yes, I know Mr. Lee Robinson of Welsh.

Q. Now, Mr. Robinson testified here yesterday that he had offered to trade Benoit 100 acres of Calcasieu land worth at that time $30 an acre in exchange for the Texas land, and that he considered and did offer Benoit $10 an acre for his Texas land in exchange and that he would assume the unpaid balance that Benoit was owing on the land that would have given Benoit 400 acres of Calcasieu land, which Mr. Robinson testified was worth $30 an acre, upon which there would have been only $2,000 balance due. had Mr. Robinson had those 100 acres of land in Calcasieu Parish with only $2,000 indebtedness against it, wouldn't you have proceeded against that property?

By Mr. McCoy. Objected to that as irrelevant and immaterial and unnecessarily encumbering the record.

By the Court. Objection overruled. Let the evidence go in for what it is worth. It is only an opinion of the attorney as to what he would have done under the circumstances.

A. Had I thought or known that the land in Texas

was of that value I would have advised the trustee to look further into the matter and see if the evidence could not have been procured that would justify the filing of the suit to set aside the transfer to Scharff.

Q. The trustee, Mr. Kinder, acted under your advice and instructions in this matter?

A. To the best of my knowledge he did in all respects.

By Mr. McCoy.

Q. Judge if your investigations as to the value of the land had lead you to believe that there was much less equity in it than stated in the question asked you by the attorney for the plaintiff, you also would advise suit instituted or investigations instituted relative to the character of the transactions, would you not?

A. I would, provided, of course, that there would have appeared in my opinion a sufficient equity to have been a benefit to the creditors.

By the Court.

Q. In giving your opinion you treated the vendor's lien which at that time was $6,000 as being so great as to leave no equity worth contending for?

A. Yes, sir. I have reference to the vendor's lien and the mortgages stated in the letter from the attorneys and I forgot now what the consideration and the deed from Benoit to Scharff was stated to be, but according to my recollection there wasn't very much difference. As a matter of course, though, whether it was a simulation or not the price stated in the deed was considered by the parties as the fair valuation of the land at the time and it was the 118 best information I had on that subject. I have an idea that there was another letter from the firm of Wilson & Wilson which stated that they did not know the land and they could not tell me the value of it, but this is a mere impression and I would not testify to it positively as a fact.

Q. Then your investigation was simply to ascertain whether the land was worth sufficiently more than the price stated in the deed to Scharff to justify the bankrupt court in instituting suit?

A. Yes, that was the first step I took, and when I reached the conclusion that there was no equity, or a very small equity for the creditors why I dropped the matter without going any further. My attention, I believe, was called to the transaction by the trustee, Judge Kinder, and it was because of such suggestion that I took it up.

Witness excused.

Mr. C. P. Martin recalled, on behalf of defendant, testified as follows:

Cross-examination by Mr. McCoy.

Q. Mr. Martin you are acquainted with Mr. Fauroux?

A. I am.

Q. How long have you known him?
A. About twenty years I think.
Q. Mr. Martin on yesterday Mr. Fauroux testified that about two ars after this transaction that he asked you in your store at Welsh, that Cleopha asked you, in his presence in your store in Welsh, you did not think Cleopha ought to get a counter letter from Mr. harff showing Cleopha had a half interest in the land and that you replied that he needn't worry that Scharff would treat him right, or words to that effect, state whether or not any such conversation took place?
A. Not to my knowledge.
Q. Do you remember of Fauroux ever talking to you about Cleo- having an interest in this land after Benoit sold it to Mr. harff in May 1904?
A. No, sir.
Q. Or Benoit claiming an interest to you in Fauroux's presence ere that time?
A. No, sir.
Q. Mr. Martin at any time since that transaction occurred, on y 2nd, 1904, if you had been asked relative to the facts by Mr. nder, the trustee, or any attorney representing him, was there reason why you should not have told them?
A. No, sir.
Q. No reason to conceal the facts?
A. None whatever.
Q. Was there anything said by either Benoit or Scharff, in your sence at the time of the transaction that would arouse your picion that they were aiming to hinder, delay or defraud the itors of Benoit?
A. No, sir, on the contrary, they were aiming to protect the itors.
Q. State how the transaction between Benoit and Scharff would protection to Benoit's creditors?
A. The assuming by Scharff of all these notes that he owed at the on the land.

By the Court:

Q. How is that?
A. The assumption of Scharff of these notes that he owed at the due on the land.

By Mr. McCoy:

Q. The mortgage notes that were going to be foreclosed?
A. To be foreclosed and leaving a judgment on that at that time, tated to me.
Q. Did Benoit so state to you?
A. Yes, if foreclosed at the time that it would not bring enough ay the indebtedness.
Q. And then the owners of the notes would get judgment against oit for the difference?
A. Yes, sir.

By Mr. GOUDEAU:

Q. Mr. Martin your testimony in this case is not quite so stron as that given before Mr. Taylor is it?

A. The only difference is the questions were not asked me just i the same lights.

Q. I will ask you the same questions I asked you before M Taylor, and in order that you may refresh your memory I will rea you the testimony that you gave before Mr. Taylor. "Where d you reside?

A. Lake Charles.

Q. Where were you residing on or about the 2nd day of Ma 1904?

A. Welsh, Calcasieu Parish, La.

Q. Are you acquainted with Cleophia Benoit?

A. I am.

Q. And Mr. Edward Scharff?

A. Yes, sir.

Q. I will hand you this certified copy of an act of sale and se if that was an act of sale drawn by you?

A. Such an act was passed before me, I think, it was th same parties and witnesses. I don't know about th
121 scription.

By the COURT:

Q. Who were the witnesses?

A. Labit and Welsh.

By Mr. GOUDEAU:

Q. This act was purporting to transfer some 1,600 acres of lan which Mr. Benoit was owning in Matagorda County, Texas, to Mr Scharff?

A. Yes, sir.

Q. Previous to the execution of this act did you have any con versation with Mr. Benoit regarding this land?

A. Yes, sir, a good deal of it.

Q. Did Mr. Benoit ever offer you this land previous to the execu tion of this deed, or to the bank you represented before this execu tion?

A. He did.

Q. Did Mr. Benoit ever have a conversation with you regarding the transferring this land to Mr. Scharff and the agreements, consid tions under which he was to transfer it?

A. Yes, sir, there was a good deal of talk about it.

Q. About the time the act was passed?

A. Before and after.

Q. Do you remember the substance that was said then?

A. I can repeat about ten chapters of what was said.

Q. Just the substance?

A. The substance, what's the consideration.

Q. Will you please state it?

A. One of the conditions was this that——.

By Mr. Goldeat: The purpose of asking you this question is for the purpose of showing that as I said, your testimony was not as strong as the other time.

A. Cleopha Benoit wanted to relieve himself of the indebtedness that was hanging over him at the time; that he was afraid that if the land would be foreclosed that the land would not bring the amount necessary to pay the debts and there would be a judgment against him for the difference.

Q. Is that what you testified to before Mr. Taylor?

A. The question was not asked me the same way.

Q. I am asking you the question exactly as I asked you then. That's the reason I am offering you this for the purpose of saying whether that was correct or not?

A. That was correct.

Q. Will you please answer the question that way?

A. This question might have been asked after the act was passed or before. I don't remember. This answer would be all right after the act. I answered that same question yes.

Q. On about the time the act was passed?

A. After, that's right.

Q. Will you please state—— ?

By the Court:

Q. Mr. Martin I will read you the question which was asked you on your examination before the Referee Taylor, which was as follows: "Do you remember the substance that was said then?" Then the answer given in that testimony is as follows: "Yes." "There was a good deal said, to the best of my recollection Scharff was to buy the land and he was to sell the land at some future date whereby he would refund Mr. Benoit, if any, that is, some of the profits that would be realized from the sale, deducting 8% interest on the moneys paid out on the land, and also that Mr. Benoit had agreed that the claim of the Welsh National Bank would be one of the first claims paid if Mr. Scharff made any profit and turn over any to him, in other words turn over to Mr. Benoit. That was one of the reasons why I was interested in that particular instance." Now, Mr. Martin, that the answer given by you at the time?

A. That was the answer.

Q. State whether that answer was given before or after the deal?

A. You mean the explanation? It was given a good deal after.

By Mr. Goldeat:

Q. In other words, as I understand it, Mr. Scharff assumed something like $6,000 worth of notes in this deal? (Your answer is) Yes, sir, something about that amount I remember.

Q. In the event that he sold he was to pay this $6,000 back? Your answer is, "Yes, sir."

A. In the event what?

Q. In the event he sold he was to pay this $6,000 back to hi
self, and your answer is yes, sir.

A. I don't recognize that answer. I don't understand the me
ing of it.

Q. Wasn't your answer Yes, sir?

A. Who was he to pay it too? I don't know that the ste
rapher is correct on that.

Q. Your answer is that is yes, sir?

A. I don't remember the question. I have no idea about it.

Q. It so appears in the Stenographer's notes as transcribed
the stenographer?

A. Yes it does, but I don't recognize the question.

Q. With 8% interest and in the event there would be anythi
over that these profits were to be divided between him and Ben
or was it to go to Benoit? And your answer to that as it appe
by the stenographer's notes is as follows "I can not remember
exact wording. He was to share with Benoit the profit,
124 I don't know what parts of it, but the profit that was to
paid was to pay the notes of the Welsh National Bank, wh
I represented at the time. I don't agree as to the $6,000 bei
all monies paid out on the land and expenses including taxes on
land, and he was to pay 8% interest from all claims on the
payment until sold or whatever profit was realized then. Now
next question was, as appears by these stenographer's notes. N
is that correct?

A. I testified to that effect yesterday.

Q. There was to be a division of profits between Benoit a
Scharff. And the answer was, "Yes, sir, but I don't know wh
proportion." (The stenographer has proposition.) Is that correct

A. It must be if its there.

Q. "What office do you hold in the Welsh National Bank?" T
answer was "President" is that correct?

A. Correct.

Q. Was there any cash consideration paid Mr. Benoit on the da
of the sale, and the answer was "Not in my presence" is that correc

A. That's right.

Q. Now you have stated that the object of the sale was to sec
the creditors who held the mortgage notes, wasn't these notes
cured by vendor's lien on the land?

A. Under the hammer at that time it would not have brought t
price.

Q. How do you know that Mr. Martin?

A. I will state that there is Mr. Eraste Bonquet who owned lan
right neighbor to that. He lost on it the sum total of $11,000.
he possessed. And then Mr. Arceneaux, I understand lost somethi
like $15,000, and he was afraid the same thing would come to hi

Q. Do you know Mr. Lee Robinson?

125 A. I do.

Q. Do you know whether or not Mr. Lee Robinson wa
financially able to pay $6,000?

A. I know he wasn't.
Q. He wasn't.
A. Yes, sir.
Q. Wasn't he President of the First National Bank of Welsh at that time?
A. Of the Welsh——?
Q. Of the First National Bank?
A. Yes, sir, that's right.
Q. Don't you know that he had lots of property in Calcasieu Parish?
A. He did.
Q. Now Mr. Robinson testified that he was willing to trade this land at $10 an acre and assume the payment of these notes, do you mean to say that Mr. Robinson could not have carried that agreement out at that time?
A. There was other consideration. I remember some of that myself.
Q. Do you mean to say that Mr. Robinson could not have carried that agreement as he testified to yesterday?
A. He was selling another debt to Mr. Benoit that he did not want to get into it. Mr. Robinson was offering that but he wanted to get Mr. Benoit into for larger sums he owed in Texas and Benoit wanted to relieve himself of the obligation.
Q. The question is, could or not Mr. Robinson carry out that agreement with Benoit had he assumed this obligation?
A. I think so.
Q. So that it would not have been necessary for Benoit to sell the land if he wanted to get rid of it or that the land be
126 foreclosed and the notes would have been paid according to your testimony?
A. Not unless he assumed as much liability as he still had.
Q. That's not the question Mr. Martin. That's not what I am trying to say you are trying to——
Then you was securing only the mortgage creditors and your bank then?
A. No one in particular, we were trying to save a judgment against him in order to protect him.

By Mr. McCoy:

Q. Mr. Martin did Mr. Benoit tell you at the time that he and Mr. Robinson were talking about trading why he did not accept Robinson's proposition?
A. He did.
Q. Why?

By Mr. Goudeau: Objected to for the reason that Robinson is not a party to this suit and any conversation that he ever had with Robinson does not affect the issues of this case, and that it is irrelevant and immaterial; that it is a conversation between third parties having nothing to do with this.
By the Court: Objection overruled.

By Mr. McCoy:

Q. What did Mr. Benoit tell you at that time was his reason for not accepting Robinson's proposition?

By Mr. GOURDEAU: Same objection renewed.

By the COURT: Overruled.

127 By Mr. GOURDEAU: We ask that he be qualified.

By the COURT:

Q. Do you remember the substance of ——?

A. I do.

Q. Where was that?

A. At Welsh, in my office.

Q. Go on and state the conversation?

A. Mr. Benoit refused to deal with Mr. Robinson in the matter, because there was no money consideration and Mr. Robinson wanted to sell him some land in Calcasieu Parish at $30 an acre and buy ——'s land over there at $10 an acre, to the last of which objection, and he assuming a note for nearly as much as he would the other land.

By Mr. McCoy:

Q. He objected there to going into debt for it?

A. He did.

By the COURT:

Q. Mr. Martin, there it is said that there was an offer made by Mr. Robinson to Mr. Benoit?

A. I understood — was so stated to me by Benoit.

Q. Did you ever hear or understand anything of that kind from Mr. Scharff?

A. I cannot recollect that plainly. I don't know.

Q. Do you know of your own knowledge whether Mr. Scharff knew of such an offering having been made?

A. I do not.

Q. Now you spoke of a conversation had in reference to the deal with Mr. Scharff after the deal, in which there was some reference or division of profits to be made to Mr. Benoit, that conversation was between you and whom?

A. Between Mr. Benoit, and Mr. Scharff, myself and
128 others in my office.

Q. And others besides these?

A. Yes, sir.

Q. Mr. Scharff at that time, denies that there was such an agreement or understanding between him and Benoit?

A. The question of agreement did not come up. Mr. Benoit was complaining of the losses that he had made on the Texas investments and Mr. Scharff told him: He says "In case that the investment proves beneficial I shall recompense you. I have always been good to my creole friends, and I shall recompense you." At that

and I tried to make Mr. Scharff agree to assume the payment of that $700 which Benoit owed to the Bank and Mr. Scharff would not do anything of the kind. He said "That's between you and Benoit."

Q. Was there anything said in that conversation showing that Mr. Scharff understood that it was understood between Benoit and Mr. Scharff that Mr. Benoit was to receive a part of whatever profit could be made out of that transaction?

A. Nothing except that he stated then that he would recompense him. No amount or specification of any kind.

Q. How long after the sale?

A. Same day. They were in my offices. Same day of that Lehr transaction also.

Q. Was this conversation had immediately after the sale—before they went or had they went off?

A. That I cannot say whether it was or not.

By Mr. McCoy:

Q. Mr. Martin, I may be in error but yesterday I understood you to say in your direct examination that Scharff assumed the indebtedness due the Welsh National Bank and later you stated that Scharff refused to assume it; now which was it?

A. He always refused to.

Q. Then if you stated yesterday that he assumed it it was in error?

A. I did not so state.

By the Court:

Q. Your statement Mr. Martin was, I asked you if it was agreed that Mr. Scharff would pay you if there was any profit out of the transaction?

A. He never would say that.

Q. Did you not say that the object of making this transaction was to get the mortgage indebtedness and your debt?

A. Mr. Cleophe Benoit agreed to that and not Mr. Scharff.

By Mr. Gougeat:

Q. Didn't you testify before the Referee that in this division of profits that the first debt that was to be paid was the debt for the First National Bank of Welsh out of these profits?

A. During the conversation of Mr. Scharff and Benoit I did.

Q. Then that was in the presence of Scharff and Benoit and myself?

A. Yes, sir, and others.

By Mr. McCoy:

Q. Who agreed that it should be paid?

A. Mr. Benoit agreed that it should be paid. I insisted that Mr. Scharff agree and he would not do it.

By Mr. Gougeat:

Q. Then Mr. Scharff agreed that Benoit could pay it out of the profits?

A. He had nothing to do with it. It was the conversation between us by Mr. Benoit agreed that the first debt, if he got anything out of this profit, he would pay the First National Bank.

130 Q. Out of these profits that he would expect from Mr. Scharff?

A. Yes, sir.

Q. And Mr. Scharff did not deny or say that Benoit had no reason to expect profits from the sale of this land if there was any? (Answer that yes or no.)

A. He did not say anything.

By Mr. McCoy:

Q. That was immediately after Scharff had told Mr. Benoit that if he made a profit ——?

A. That he would recompense him.

Q. —— or remember him, or something to that effect?

A. Yes, sir, that's correct.

Q. That was in the same conversation ——?

A. All during the same time, yes, sir.

Q. And Mr. Scharff refused to promise you that he would do anything upon the land?

A. He did to myself and Mr. Welch.

By the Court:

Q. When was this conversation had on which, or at which, it was mentioned that the original indebtedness and the amount Mr. Scharff would pay for interest and taxes would have to be designated and 8%?

A. That was during the same time.

Q. By whom was that statement made?

A. By whom?

Q. Yes, sir, by Scharff or Benoit?

A. By Mr. Scharff.

Q. By Mr. Scharff?

131 A. Yes, sir.

Q. The idea was then he wasn't to recompense Mr. Benoit until he got back all his investment?

A. That's correct.

Q. Is that it?

A. Yes, sir.

Q. And 8% on it?

A. Yes, sir.

Q. And after that he would recompense him?

A. Yes, sir.

Q. And Mr. Benoit promised you at the same time that all he would get from Mr. Scharff he would pay you on this?

A. Yes, sir.

Q. That's correct?

A. Yes, sir.

By Mr. Goldbeck:

Q. All this was in presence of Mr. Scharff?

A. Yes, sir.

By Mr. McCoy:

Q. Mr. Scharff never did state what he would recompense Mr. Benoit?

A. No, sir.

Q. If I understand it was you who testified that before the sale Mr. Benoit had proposed to Scharff that Scharff was to pay him, Benoit, one half of the profits which Scharff refused to do, is that correct?

A. How is that?

By Mr. Gordon: Objected to for the reason that the witness did not so testify.

A. That I did testify that? No, I did not.

Q. What was the proposition which Benoit made Scharff that was refused?

A. He refused to have any partnership about it.

Q. Just state what the proposition was that Benoit made to Scharff and Scharff refused?

By Mr. Gordon: Objected to for the reason that it is repetitious and unnecessarily encumbering the record.

By the Court: Objection overruled.

A. Well, the proposition was that he was to divide up on the production Scharff stated, he says: "You understand that what I mean by profit, that not what I would get paid for the coal but if I make any profit this would have to be deducted all interest and everything else, and should I make a profit, after deducting he and I shall recompense you."

By Mr. McCoy:

Q. But yesterday you testified about a proposition which Benoit had made to Scharff relative to each one getting half the profits that Scharff refused he would not accept.

A. Scharff refused.

Q. Didn't the proposition I want you to state that Benoit made to Scharff before the sale which Scharff refused?

A. That he should share equally with him in any profits and Scharff refused to.

Q. You state that the sale was made?

A. Yes, sir.

Q. And after the sale was made——?

A. He promised he would tell Mr. Benoit that he would recompense him, yes, sir.

By the Court:

Q. Mr. Mattson, do you know whether Mr. Scharff knew at the time that the sale was made of the proposition which had been made by Mr. Robinson to Mr. Benoit?

A. No, I do not know if he knew.

By Mr. Gordon:

Q. You know of the proposition made by Mr. Robinson?

A. I did. Benoit told me.

Witness excused.

Mr. EDWARD SCHARFF, being duly sworn by the Court on his own behalf, testified as follows:

Direct examination by Mr. McCOY:

Q. Mr. Scharff you are one of the defendants in this case?
A. I am.
Q. When did Mr. Benoit first take up with you relative to buying this land?
A. I don't get the meaning of that question—when he first became acquainted with me?
Q. No, when he first approached you relative to buying the land.
A. I cannot tell you exactly when it was, but he had offered me that tract of land repeatedly.
Q. Mr. Scharff do you remember the substance of the conversation which took place between yourself and Benoit and Labit and Martin, in Martin's office, just before you acquired this land in question?
A. I do not exactly remember the conversation—the proper words.
Q. I am asking you the substance only, not the words?

By the COURT:

Q. Do you remember the substance?
A. Yes, I do.

134 By Mr. GOUDEAU:

Q. You remember the substance of all the conversation?
A. Not all the conversation, no, sir.

By the COURT:

Q. Do you remember the substance of the conversation on that particular subject at that time?
A. That I was to buy the land.
Q. Do you remember the general purport of your conversation in reference to the purchase of that land? Yes or no.
A. Yes.

By Mr. McCOY:

Q. Just repeat the substance.
A. I was to purchase the land from Mr. Benoit, but that Mr. Labit would sell to Mr. Benoit his half interest in the land if I was to pay to Mr. Labit the amount of money that he had paid in interest and taxes. There wasn't anything further said about the deal at that time, that I remember.
Q. Previous to that had Mr. Benoit made any proposition to you relative to your buying the land or behalf interest in the land with him?
A. He did.
Q. State what it was?

By Mr. GOUDEAU: Qualify him.

By Mr. McCoy:

Q. Where was that proposition made?

A. It was made in the street of Welsh, La. I know of no one present.

Q. What was that proposition?

A. He wanted me to buy that tract of land. I should assume all the liabilities existing against it and to divide with him the profits if there were any.

Q. What answer did you make?

A. That I could not purchase any land in Texas; that I had some already, and that the time was not proper for me to buy now. I then said to him that if he should hold on to that land that time would come when it would be good property.

Q. Mr. Scharff was that same proposition or a similar one made to Benoit to some subsequent to that in the presence of Mr. Martin and Mr. Welsh?

A. There was a good deal said about it at that time.

By the Court:

Q. You mean in the street?

A. Yes, sir, at the time at Martin's office. I saw him there—it would be impossible to relate the exact wording of it. I remember that that proposition was made to me in like manner and I did not at that time, or at any time after, propose to have any partner in any deal that I undertook to make.

Q. Mr. Scharff at the time that you purchased this land and the time Benoit executed the deed, was there any verbal agreement at that time between you and he that you was to give him one half of the profits?

A. There was not.

Q. Now, after you acquired this property did you make Mr. Benoit any promises that you would give him a portion of the profits?

A. Mr. Benoit at that time was very down hearted, and so expressed himself, that he had loss all the money he had invested in that land and I think for my own good I was too sympathetic, and said to him, "Never mind, Benoit, if I come out all right on this deal and I make a good profit, I will recompense you, and I did that.

Q. Did you state to him what amount you would recompense him?

A. There was no amount mentioned because I would not [illegible] then know how much I would do for Mr. Benoit because I could not tell at that time land was so low. If they ever advanced sufficient in value to make a good profit consequently could not tell Mr. Benoit what I would do for him.

Q. Mr. Scharff could you state whether or not at that time you told Mr. Benoit what per cent of the profit, or what amount you would recompense him?

A. There was no percentage of profit talked about, because I would not have submitted to it at that time. To give any of my profit in such a way as I decided to give it, and that would be no more than a charitable donation.

Q. Had you made Mr. Benoit any such promise or proposition prior to the time you acquired the land?

A. What kind of a proposition?

Q. That you have just testified about.

A. There was no occasion to do that, because I did not intend to buy the land. I did not want it at that time, and I only bought it afterwards because lands was so low that I thought they could not remain so low long, they had to enhance in value, and I had confidence in Texas lands. I had some spare money at that time that I could invest.

Q. Mr. Scharff had you made any inquiries at that time relative to the market value of this land in Texas?

A. I was posted on Texas lands because my nephew was in land business in partnership with some one else (I don't remember the name) and I had bought land in Texas prior to that.

Q. Did you have any conversation with Mr. L. E. Ward about this transaction before you bought the land?

A. Yes, sir, I had.

Q. How was that conversation by 'phone or otherwise?

A. Mr. Ward 'phone to me to Welsh, but I was unable to recognize it and I had some business in Lake Charles at the time. I came over here and I went to the main office so that I could understand the language from Edna, Texas, to Lake Charles. He 'phoned to me that while the land at this time (this means at the time mentioned) wasn't worth so much that he had no doubt that it would enhance in value; that if I was to purchase that land that he thought he could sell it in the future for me with some profits.

137

Q. It was the same L. E. Ward who sold the land to Mr. Benoit and who was the maker of the note that you assumed at the time you bought the land?

A. I think it was.

Q. Mr. Scharff on yesterday Mr. Benoit testified that he went to your room one night and there you proposed to him that you would take, buy the land, hold it and after you sold it you would repay him the amount of money he had paid out on it and half the profits, state whether or not you ever made Mr. Benoit such a proposition?

A. I never did.

Q. Mr. Scharff did Mr. Benoit tell you about the proposition that he had from Mr. Robinson?

A. He did.

Q. Did he tell you why he would not accept it?

A. He talked to me about it, and there was to be some indebtedness pending against the land in Calcasieu and he wanted to know from me what I thought of it. I told him that the indebtedness against the property would be dangerous at that time, that rice was selling for from 75c to $1.25 a barrel, and in my estimation he may not be able to meet the payment and finally would lose, or something to that effect, the accurate wording I cannot recall. There was nothing further said about it at that time.

Q. The statements which you made to him at the time were thes
me? Was that your honest opinion?

A. I believe and know they was, because produce wasn't
s worth anything, and I believe that everyone in this room well
remember the year of 1904 and the low prices of rice in this
country.

Q. Mr. Scharff did you assume any indebtedness of Mr. Benoit's
except that enumerated in the deed from Benoit to you?

A. Don't you think I have enough of my own?)

A. I don't assume any indebtedness of anybody's, that would
be foolish for anyone to do.

Q. Was you requested to assume any indebtedness at that time
besides that enumerated in the deed?

A. No sir, they wanted me to settle that claim of the Bank, but
I would have nothing to do with—nothing to do with the deal
unless I was the owner free of any encumbrance except that which
was against it in shape of vendor's lien notes in Texas.

Q. Did you pay to anybody any money or deliver any check to
anyone at the time that the deeds to the land was delivered to
you?

By Mr. Goodrich: Objected to unless it be shown that it was paid
to Benoit or to anyone either holding existing liens or mortgages
against the property purchased.

By the Court: Objection overruled.

A. I paid a check to Mr. Labit for the amount he had paid on
his land in order to get an extension on the notes which he had
failed to take up and the notes. I paid a check to Mr. Labit on
the same day the deed was drawn up and I think I laid it on the
desk of Mr. Martin at the same time that the signing was done by
Mr. Labit and Mr. Benoit.

By the Court:

Q. Is that for five hundred some odd dollars?

A. Five hundred forty some odd dollars.

By Mr. McCoy:

Q. Refresh your memory as to the exact amount? (Exhibit
mitted.)

A. Yes, sir, this is my handwriting.

Q. What was the exact amount?

A. 854.35. (The way I got it down is correct.)

Q. That was a portion that was to be paid according to the agree
ent between you and Benoit?

A. That was all that I was to pay in the transaction between
myself, Labit and myself.

Q. Mr. Scharff have you subsequently paid all of the notes that
were secured by mortgages which were assumed by you and enumer
ated in the deed?

A. I have taken up all of the notes against the land, and I went
to a great deal of trouble in having the title overhauled which was
necessary. I made several trips to Texas, and I employed Dennis &

Dennis of Wharton County to examine the abstract and curin
the flaws therein. These flaws, with the exceptions of one, we
able to cure, there is one flaw remaining which never can be c
I don't know what fault it is. It has been explained to me b
the Texas laws but I cannot recall it.

Q. Mr. Scharff how much have you expended upon that lan
the payment of vendor's lien notes, what you paid Labit and
you paid for curing the defects in the title?

By Mr. Gordeau: Objected to the introduction of any testim
for the purpose of showing what he has paid on this land, for
reason that if the sale was made as alleged in plaintiff's petition,
under the law he can recover nothing if the deed is declared
and void.

By the Court: Objection is overruled.

140 A. $8,073.92, Eight thousand, seventy-three and 92
dollars.

By Mr. McCoy:

Q. Mr. Scharff at the time that you acquired title to this
did you know that Benoit was insolvent?

A. I did not.

Q. What had Benoit told you relative to his financial co
tion?

A. He told me that he wanted to pay his indebtedness. I
him "I expect that is easy to do," in a joking manner, but th
was nothing much said about it any more, that he had told me about
paying all his indebtedness. It did not concern me any.

Q. Mr. Scharff was you ever present at a conversation betwe
Mr. Benoit and Captain Gorham?

A. I was not.

Q. Was you ever present at a conversation had with Capt. Go
ham about this transaction?

A. No, sir, I don't know for what purpose it should have be

Q. What did Mr. Benoit tell you at the time was his reason
not accepting Mr. Robinson's proposition, or did he tell you why
he did not accept it?

A. He walked away after the conversation. I don't think there
was anything said that I remember.

Q. Mr. Scharff you heard Mr. Faircux testify yesterday that you
had told him that you would give Benoit one half of the profits
short time after this transaction?

A. There never was such an agreement made, how could I have
made such a conversation with Mr. Faircux.

Q. Did you or did you not tell Mr. Faircux that you
141 would give Mr. Benoit one half of the profits?

A. I did not.

Q. Did you ever tell anyone that you were to give Benoit one
half of the profits?

A. No, sir.

Q. Did you ever tell Benoit or anyone else what portion of the

profits or what amount of money you would give him in the event that you made any profit?

A. There was nothing said about any amount of money that I was to give to Mr. Benoit by anybody what was said was said of my own free will and unasked. When he complained that he had lost his money in Texas land that I would be liberal with him if I made a profit out of it.

Q. After you purchased this land and after Benoit went in bankruptcy did he approach you to borrow any amount of money?

A. I think Mr. Benoit and Mr. Faurgux came to me one day and wanted a loan. If I remember right it was about $50, or something to that effect. It's a long time ago, and I would not positively state as to the amount.

Q. Did you loan it to him?

A. I did.

Q. Did he repay it?

A. It was repaid, but I cannot tell now by whom it was paid, either by Mr. Benoit or by Mr. Charles Faurgux, but who paid it I cannot tell any more. It was either one of them two. I would not have remembered the circumstance at all if it had not been brought in Court.

Q. Mr. Scharff subsequent to that did Mr. Benoit come to you to borrow any money?

A. No, sir.

Q. Did he borrow $200?

A. You mean before?

112 Q. Subsequent—after?

A. Yes, he came to me one day and seemed to be very much troubled and he told me his trouble.

Q. Just state what he told you.

A. He told me that his house was leaking and in a bad fix and not a fit house to house his family in and it needed repairs very badly and he had no money. And I said to him, "Well, how much money do you think you need"? He said "Will you can let me have—" And I told him would $200, do you at present. He said "That will help me out so much." I think I went somewhere, may be in my office, I cannot tell where, and I loaned him the $200 and I got him to give me his note for it.

Q. Now, Mr. Scharff at that time did Mr. Benoit claim to you that he had any interest in this land?

A. There was nothing said about land.

Q. Subsequent to that did Mr. Benoit approach you relative to buying cattle?

A. He did. At that time I had some cattle—I think it was after he had gone into bankruptcy that he started a butcher shop and one day he told me that if he had some cattle he could make some money. I had a stock of cattle on the farm at that time for grazing purposes—more for the benefit to my land than for the raising of cattle—and I told him I would sell him some of my cattle. He told me he had no money. I told him "Well, Benoit, some day I come out ahead of this land I just feel and I sell you these

cattle, and if you cannot repay me you pay me as much as you can on it, but if you cannot repay me it won't matter much anyway." He told me that if I did that he would be very happy; that he could make some money out of them and it would help him out—put him on his feet—so we went to the farm and looked over the cattle. There was a good deal said about the price, and

143 Mr. Benoit was a very close buyer, having purchased mostly always native cattle. The cattle I had I had shipped in from Texas and were mostly red cattle and would weigh more, but we finally agreed on a price, which was $22.50 per head for the cows and I think there was several calves—ten calves at $8.00 per head—they were young calves. That was all I sold him at that time. I believe it was in 1906, in the Fall, when I wanted to plant some more rice and the cattle were in my way. I asked Mr. Benoit if he would not buy the balance of the cattle, and after quite a bit of talking, we agreed that he would take them. The price agreed upon that time was for fifteen cows and one bull $25.00 a head, for ten two year old, $17.50, and nine yearling and calves $10.00 a head. He paid me at that time on these purchases $175.00 in cash and on March 25th, 1907, he paid me $50 cash, but since that time he hasn't paid me anything.

By Mr. Goldman:

Q. Has he paid you anything on that first purchase?

A. No, sir.

Q. And he paid you nothing at all on the first lot or bunch of cattle up to this time?

A. I did not get any cash on the first lot.

Q. Have you ever gotten anything on them?

A. Yes, sir. $175 and the $50 also was to apply on the old account.

Q. Was that the statement made by him at the time?

A. There was nothing spoken by him about that time, but I think that was the consideration.

Q. You just made the application yourself?

A. Yes, sir, myself.

Q. You did not tell him you were applying it that way?

A. No, sir.

144 By Mr. McCoy:

Q. What was the date of the first sale to Benoit?

A. 5th of December, 1905.

Q. What was the date of the second sale to Mr. Benoit?

A. November 26th, 1906, when I made the entry. It must have been a day or so prior to that.

Q. The first sale then was approximately a year and a half after you acquired the land?

A. The first sale was in December 1905, the 5th of December, the records show when he went in Bankruptcy.

Q. Mr. Scharff when was the first time that Mr. Benoit ever stated to you that he claimed a half interest in this land after you bought it?

A. It was one evening in my office, and I emphatically told him at that time that he had no interest in that land, and as I had told him before that if I had to have any partners in the transaction, I would have nothing to do with it, and he got very angry at that time about this matter.

Q. When was that?

A. I cannot recall the date.

Q. Can you recall the year?

A. It was the time he claimed he could make a sale in Texas for the land for considerable money. I was then anxious to sell the land at a profit and I had it with several real estate men that informed me at that time the land could not be sold for any such prices as he had stated. I don't remember exactly what it was, but I believe, if I remember right, that it was that letter from Mr. Charles Fairoux.

Q. Can you state what year it was in?

A. That letter ought to show it, I don't know.

Q. Mr. Scharff after you acquired the land what efforts did you make to sell it and how long was it before you began to try to sell it?

145 A. It was no use to try to sell it when I bought it, but soon after that I found that Texas lands were coming in demand and I put it with various real estate men, but very few would take it on the terms that I had given it.

Q. What price did you first put on the land when you put it on the market and listed it with real estate agents?

A. I cannot exactly remember the amounts that I have given, as it is a long time ago now, but I know that I have given it for $12 an acre, and then $15 an acre and advanced the price of the land as I thought the values of the land advanced in Texas, but owing that the real estate men wanted to make so much profit in that deal I have not been able to sell it up to this day.

By the Court:

Q. Mr. Scharff how long after you purchased the property before you put it on the market at $12.00 an acre?

A. About two years, I think, Judge, Your Honor.

By Mr. McCoy:

Q. About the time the railroad was built across it?

A. I think, Yes. When that railroad built across. I was very much elated about that property and I thought I could realize a very fine profit on it. Eventually I will, but so far I have not been able to obtain the price that I heard so much rumor about.

Q. Mr. Scharff had you seen this land before you bought it?

A. I was on or near the land before I bought it. I would not positively state so, but the description was given me accurately by real estate man.

Q. You thought you was on it then?

A. Yes, sir, but I cannot positively state.

Q. Mr. Scharff when was that?
A. That's a long time ago. I cannot remember that.
Q. Well, with reference to the time when Mr. Benoit
146 bought it when you saw the land?

By the COURT:

Q. Was it before or after you made the deal—the purchase?
A. I don't remember that, Judge, Your Honor. I was on or near that land one day, but after or before the purchase I cannot remember exactly.

By Mr. McCOY:

Q. Mr. Scharff state whether or not you had any intention or if it was your purpose to either hinder, or delay or defraud the creditors of Benoit when you purchased this land?

By Mr. GOUDEAU: Objected to for the reason that that is a matter to be decided by the Court from all of the surrounding circumstances, and the testimony of the witness as to whether or not these creditors have been hindered or defrauded is inadmissible.
By the COURT: Objection is overruled.

A. I did not know that there was any creditors at that time to defraud, or I certainly would not have entered into any conspiracy to do so.

By Mr. McCOY:

Q. Mr. Scharff in Capt. Gorham's testimony he stated that Benoit had told him you were asking for a deed for this land in order to secure an unsecured debt which Benoit owed you, state whether or not Benoit owed you any unsecured debt at the time?

By Mr. GOUDEAU: Objected to as being irrelevant and immaterial and for the further reason that there is an admission of counsel of record, and has been introduced by defendant, showing that
147 Scharff never filed any claim in the bankruptcy proceedings of Benoit, if Benoit was owing him anything it does not appear of record.
By the COURT: Objection is overruled.

A. Why Benoit did not owe me anything at all unsecured.

By Mr. McCOY:

Q. Did he owe you a secured debt?

By Mr. GOUDEAU: Same objection.

A. Why that note?

By Mr. McCOY:

Q. What note?
A. I held two notes after the deal from Gerst to Benoit, which were of second mortgage or vendor's lien and I purchased at that time. I thought it was good for I knew the parties to be good, and

I was able to obtain them at discount. I purchased these two notes, one of which was paid and the other unpaid.

Q. What was the amount of the note that was unpaid?

A. $500.

Q. Is that the same $500 note that is enumerated in the deed from Benoit to you passed before Martin on May 2nd, 1904? (Exhibits the deed.)

A. That's the note, yes, sir.

Q. The note that you referred to then is the $500 note executed by Cleophe Benoit in behalf of L. E. Ward, due November 21, 1903?

A. Yes, sir.

Q. And was secured by vendor's lien from Benoit to Ward, the deed that was introduced in evidence yesterday?

A. Yes, sir.

Q. Mr. Scharff at the time that you purchased this land did not have any fear of your being able to collect this $500 note?

A. No, sir.

Q. Why?

A. I considered it perfectly good against the land and Mr. Benoit both.

Q. Was that the same note that the Labits had assumed in that deed?

A. I could not tell that, Judge, your Honor.

By the Court:

Q. Did you consider, Mr. Scharff, that you could collect that note by foreclosure on the land?

A. If I could collect it?

Q. Yes, sir, by foreclosure on the land?

A. Well, it was doubtful, Judge, because at that time I don't know what the lands would have brought. The other notes or vendor's lien notes were first and this was second.

Q. What was it that made you feel satisfied that this note could be collected?

A. I felt satisfied he could meet his obligations. I had the note with Wesly Welsh for collection in the bank. I don't know if he rescinded it for recollection or not. I had that there with some other notes which I kept with him.

By Mr. McCoy:

Q. Mr. Scharff did you receive any letters from Mr. Goudeau during the Fall of 1908 asking an appointment with you?

A. I did.

Q. Letters marked "D-30, D-31 and D-32" are the letters referred to?

A. Yes, sir.

12 M. Court adjourned until 2 P. M.

By Mr. McCoy:

Q. Mr. Scharff did Mr. Goudeau call to see you at Welsh in

compliance with his letters of September 19th, 1908 and Septem
21st, 1908, marked "D-31, D-32"?

A. I remember the instance. Yes, he did call on me.

Q. You remember the conversation?

A. I do.

Q. Who was present?

A. There was no one present.

Q. But you and he?

A. Him and myself.

Q. Just state it?

A. Mr. Goudeau came to me after making the appointment a
he came in the interest of Mr. Benoit about this Texas land, a
that he had a compromise to offer to me. I was surprised and I t
him so. He told me that if I did not compromise the matter w
him that he could not force, nor could not sue me for Mr. Ben
as Mr. Benoit was a bankrupt, but if I refused to compromise t
he would sue me for the benefit of the creditors. That was abo
the substance of the conversation. I then told him if I had an
thing that did not belong to me that it wasn't for Mr. Goudeau
say if it was mine or not that I preferred for it to go to the Cou
to decide if this was mine or not, and he said when I would he
from him again it would be a plenty. That was about all.

Q. He represented himself then to be acting in the interest
Benoit individually?

A. He was.

Q. Did he state anything to you at that time as to which would
the cheapest for you to settle with Benoit or with the creditors?

A. I think such a thing was mentioned, but I would not b
150 positive of that, but I know he wanted to get a compromis
from me in favor of Mr. Benoit. I told him further that
never owed anything in my life that I had acquired dishonestly and
if I had such a thing in my possession that wasn't exactly right tha
I would prefer for the Courts so to say and I would rather no
want to.

By the COURT:

Q. What Goudeau do you speak of?

A. This gentleman standing before me.

Q. The attorney in this case?

A. Yes, sir.

By Mr. McCOY:

Q. Mr. Scharff you remember the conversation you and Mr. Cor
bello had when he served the papers on you?

A. I think I do.

Q. Just relate it.

A. Mr. Corbello presented me with the papers. It knocked the
wind out of me. I did not expect such a thing and I said to Mr.
Corbello. I am so surprised at such an action of Mr. Benoit. That's
all I said. There were some other men who stepped up about the
time (I don't remember who they were) and the young man
walked off.

By Mr. McCoy: It is agreed by counsel for both plaintiff and defendant that the bankruptcy of Cleophe Benoit was not reopened until the 17th day of October, 1908.

Witness consigned.

Cross-examination by Mr. GOUDEAU:

Q. Mr. Scharff you say that the first conversation you had with Mr. Benoit in reference to this property that he was down-
151 hearted and said that he was afraid that he was going to lose all the money he had in that land?

A. He was down hearted about not being able to make the payments on the mortgage notes then existing on the land.

Q. Did he tell you that he could not make these payments?

A. He wasn't to make them payments at all.

Q. Who was to make them?

A. Mr. Labit and he thought that he would not make them.

Q. Now in the event that Mr. Labit could not make them did he tell you whether he could make them or not?

A. No, he did not tell me that.

Q. Why should he be down hearted if he could make the payments himself?

A. I don't know. I could not tell you that. Probable he thought that the deal he had made with Labit was to free himself from the obligation.

Q. Now you say that Mr. Benoit told you about the deal that Mr. Robinson had proposed to him?

A. I think he did.

Q. And that you advised him not to do it because you thought that he would lose the land if he did make it?

A. He asked me my advice about it and at that time rice being so low and there would be an indebtedness against this land I told him that he might not be able to meet that obligation.

Q. And he would lose the land?

A. I did not say anything about losing the land. I don't remember anything about that.

Q. What was the advantage to be gained by Benoit in transferring this land to you without getting a cent for it beyond your assuming this unpaid balance, having in mind that deal with Rob-
152 inson, what was the advantage to him with the deal which you offered to him?

A. That was talked about with him long before the deal was made; and going into further indebtedness might not prove beneficial. Now, I don't know that Mr. Benoit had made the statement to me like Mr. Robinson had made it to him. He had told me something.

Q. State it all.

A. He told me that Mr. Robinson had made him a statement—the accurate amounts he did not state to me; and he told me that there was some indebtedness against the land, or some mortgage to be retained—the items I don't remember—and I told him that owing to the low prices of rice how did he expect to pay for it.

Q. Could he have lost any more in the Robinson deal than he did in making this transfer to you?

A. Probably not, but that deal was made some time after. I did not have any idea at all about having the land then from him at that time and I told him so.

Q. Did you know what price Mr. Benoit sold his land there near Welsh?

A. I heard it said. You mean the Welsh land—and he did say I know. I got it from hearsay and I understand it's $22,000 or more.

Q. You know how much land he had there?

A. It was several hundred acres. The approximate amount I do not know.

Q. Do you know how far it was from the land that Mr. Robinson was offering Mr. Benoit in the trade?

A. I do not.

Q. Has he ever paid you that $200 back, Mr. ——?

A. He did not.

Q. What did you do with the note?

A. He told me to give it to him.

Q. Did you return it to him?

153 A. Yes, I did.

Q. Why.

A. Because I got scared of the man. He was in my office at the time and he tried to claim some interest in my lands and I told him he had no interest and never did have.

Q. That was at the same time that he handed you a letter from Mr. Faurnix?

A. Yes, sir, that was the same time, and he asked me then if he had to pay that note and I told him at that time that if he did not pay that note it would not make so much material difference to me; that I intended remembering him in the future which I had said at the time when the deal was made.

Q. About how long after this transfer was it that he came to you with that letter from Faurnix?

A. I don't know the date of that, but isn't the letter sufficiently dated to know when it happened?

Q. I haven't the letter.

A. It was in 1907, I think, if I remember right.

Q. That was about three years after?

A. Yes, sir, and that was the first time that Mr. Benoit ever did try to claim any interest in the land, because I told him that unless I could own all the land and no partnership with Mr. Lafitt nor him, I would have preferred not own the land.

Q. In other words you did not want to have it appear of record?

A. I did not want anything that did not belong to me and Edward Schorff paying for it. The idea of a man paying the full value of anything and trying to give interest to other parties of his claim for value therein would be preposterous. Any business man would not think of it.

Q. Do you consider Mr. Lee Robinson a good business man?

A. In a measure, yes.

151 Q. Hasn't he made a success at Welsh as a business man?

A. He has made a success and has made many errors. He has made a success with the rice mill. Him and Charlie Martin had that. He had to sell it.

Q. He is a good deal better off now than he was when he first came there?

A. He is a good deal better off now than he was when he owned that rice mill.

Q. Isn't it a little peculiar Mr. Scharff that three years after this transfer that Mr. Eauroux, in Houston, Texas, should be writing to Benoit and telling him that they could sell this land and get Mr. Benoit to go to your office with this letter asking you to sell it and that you told him and got very angry, and get so afraid of him that you ever gave him $200 if Mr. Benoit did not think that he had no interest in this land?

A. I have already stated before that at the time of the deal was made that he, Mr. Benoit, was very sore about having lost the money in this land and I stated that "never mind, Benoit, the time will come when I can realize and make a profit on that land and I will remember you."

Q. Who did you list the land with at $12.00 an acre?

A. Yes, sir.

Q. Who was it listed with?

A. I cannot recall who I listed it with at first, but I know I have listed it with a concern in El Campo, the Gulf Coast Land & Development Co., and I have some letters in answer to my enquiries in trying to get them to sell it for me.

Q. When was that?

A. That was in 1906 or 1907.

Q. Subsequent to that did you list it with anybody?

A. Why, yes. (Subsequent means what?)

Q. After?

A. After this I listed just lately with a firm in Galveston, with Mr. Grant & Cope.

Q. What did you list it with them?

A. I listed it at $20 an acre. I listed it six months. I heard of a sale of Mr. Logan's land on this side of the Creek at $19.00 and of course, I asked $20. This question of asking is now always receiving. We always ask more than we want in order to get you to which is customary.

Q. What would you consider that apparently worth now?

A. From the best information of the oldest settlers and the best real estate men in that country today, I think it is worth between $10 and $15.00 an acre.

Q. If there was nothing against this land, that is, if this suit had not been instituted, would you take $15.00 an acre for it now?

A. You mean this suit. If that suit wasn't instituted I would take $15.00 an acre for it cash. I don't reckon that I would pay any

commission in that. If I was to close the deal with you to-day, I would take $15 cash.

Q. Would you take any less?

A. I don't think I would take any less now.

Q. Now, Mr. Schaffl, do you know Mr. Koch of Houston?

A. Yes, sir. I spoke to him one day and wanted to ask—Yes, sir, I spoke to him one day and he is one of the large land buyers in Texas—a syndicate as I understand it—he subdivides lands, build roads, buys land cheap and divide that into small tracts and sell that at large prices. I went to see him, I had heard that he would be a probabel man to sell this land, but he would not encourage me. He said that land was poor and he could not use it at the price that I intended. I think I spoke to him about this land as being worth $18.00. I would not be positive as to the prices because it did not amount to anything. He did not handle it.

Q. He only handles land as a speculation?

153 A. He only handles very large tracts of lands, subdivides them and builds roads and builds houses, improves it and sell them in small tracts.

Q. In December last you Mr. Schaffl, in answer to the question of Judge Overton, when you were being examined as to the value of that land in Texas, didn't you swear that that land was only worth $8.00 an acre?

A. I was examined by whom?

Q. Judge Overton in the matter of succession of your wife?

A. I considered that land worth $8.00 that time because I had the only bona fide offer made to me was $8.00. I never had any offer for that land from any one that I would consider an offer, that's the reason that I put that land for exactly the item I was offered for it. I have never had an offered made on any deal.

Q. When was that $8.00 offer?

A. That was made in the spring of 1909. I think it was March, June, 1909. The letter cannot be questioned because it is—we can get a sworn affidavit to it if it is necessary and the party is reliable.

Q. Yet you would not take less than $15.00 an acre for it?

A. Well, what a man takes and what a man gets is a different thing. I might have that land to-morrow and get $20 an acre for it. At present I cannot get $15.00.

Q. Wasn't that letter that Bemis brought to you from Mr. Fauroux making an offer, or Mr. Fauroux stated that he had an offer of $15.00 for the land?

A. I never read that letter. I don't know that it looked like because I was informed at that time from the Gulf Coast & Land Development Co., about the same time that that letter came, people that were conversant with that country the northeast and they had told me what the land was worth and what it could be bought for, and

157 I could not go on a deal on a wild goose chase as I had done many times before.

Q. How did you know it was a wild goose chase?

A. Simply because I was not...inted with the value of the land and the offers I had from various people.

Q. Didn't Mr. Benoit say that Mr. Fauroux had an offer of $15,00?

A. No, sir.

Q. You did not look at the letter at all?

A. I probably looked at the letter, but I told him I did not have any time at that time, nor did I care because I did not think Mr. Fauroux had any bona fide purchaser.

Q. Then for all you know from your own personal knowledge he may have had one?

A. Yes, he may have had a dozen, for all I know, but I did not think Mr. Fauroux a much better businessman to sell it than I was, another thing, what business did Mr. Fauroux have in trying to sell my piece of land?

Q. That's what we would like to know?

A. That's what I'd like to know too.

Q. He gave his explanation as to why he had an interest in there.

A. Mr. Fauroux may have heard a good deal of conversation about this matter that did not emanate from me.

By the COURT:

Q. Did he explain to you why?

A. No, he did not explain to me.

By Mr. GOUDREAU:

Q. It is a very unusual thing for a man that has no interest in any land to go to another man and try to get him to sell his land and because he doesn't go very much ahead of, or touch so that the other man gave him $200?

A. It is very usual with me, because when I make a promise I usually live up to it. I took Mr. Benoit a promise as I [illegible] before stated after the deal was closed that should I do well enough on that land that I would remember him, didn't I? I made that statement, then because I a right to change my mind when I think, have no need of some money to help him? And if I anticipated that and thought that I had already made some profit on the land [illegible] or me to sell it, cannot I anticipate that and let him have the use of $200?

Q. Hadn't you given him already something like $200 in cattle previous to this time?

A. Yes, sir, I did. It was previous to that. I am not positive as the last deal was previous or after, but I did that for the same reason just expressed now to help the man out, but I did not think he would turn and use himself in that way.

Q. Have you sold that land yet?

A. No, sir, I did not because I never could make sufficient profit on it that I thought would justify me to sell that property for the valuation that have been stated to me.

Q. Then when you say you had not promised him this—to make

him a donation, as you call it—after you had sold the land y
begun real early to make these donations?

A. When would you make it when the man don't need them
when he was in absolute want of it?

Q. Did you consider that he was entitled to that as coming on
land?

A. No, sir, I did not think that he was entitled to anything
ing from the land; that was optional for me to determine what I
to give to Mr. Benoit and no body else has the right to say what
am to give Mr. Benoit and what I should not. I did not make
promise except that if I did make any profit on the land
159 I would remember him. Now if —— can make any more
of it, go on.

Q. That's what we are trying to do right now.

A. Go ahead.

Q. You are a rice farmer around Welsh?

A. Yes, sir, I am.

Q. You made money in the rice business?

A. I have.

Q. Taking a tract of 400 acres of land around Welsh on a cash
as a rice farmer, wouldn't it, under ordinary circumstances, not
worst nor the best, couldn't the man pay $2,000 on that land?

Q. I am now taking it under ordinary circumstances?

A. Not at that time.

Q. Answer my question—? Under ordinary condition—?

A. I am speaking at the time this transaction was made.

By the COURT:

Q. Under ordinary condition-?

A. I will state to you, Your Honor, that at the time
Q. That's not the question.

A. Generally speaking there is only one of the rice men of
ersion, that is conservatively speaking that have not only made
money but have lost. That I have made money as I
at it in a systematic way. I help crops when they were down
year or two before I would sell and until they had a value. In
way I have made money, but I could recite to you several
Your Honor, you know it too, that there is lots around this
town here who have lost in rice.

By Mr. GOUDEAU:

Q. Haven't you known of instances where a man has
work and bought the land on the crop system and has paid
A. I have, yes, sir, but very few of them.

160 Q. Well, it has been done?

A. It has been done and I am one of them that has made
money on the tenant system, but nevertheless the percentage has
lost money instead to keep money.

Q. Then a man that would start on 400 acres of land with only
$2,000 due on it would have a decided advantage over a man that
starts with having all of his land to pay for would he not?

A. Crop payments, as I understand it. I never had any dealings with those matters, is where a *pay* does not have to pay unless out of the crop. When a man pays for anything and it becomes due it is a different thing. Am I correct in that?

By the COURT:

Q. You have not answered the question? (Reads the question.)
A. Why, if he had land that he had partly paid on it it would be better than if he had all to pay for it.

By Mr. GOUDEAU:

Q. You say when Carballo served that citation on you that it sort of knocked the wind out of you, what do you mean by that?
A. It surprised me.
Q. Why should it surprise you?
A. Why should it not surprise me.
Q. Now Mr. Scharff, when the Brownsville Railroad asked for a right of way through that land didn't you go and ask Mr. Benoit or no matter whether you went to him or not makes no difference, *by* talk to him about it and asked him what he thought was the best to do?
A. I don't remember that. What is that?
Q. Repeats the question.
A. I did not. I might have mentioned to him that there is a railroad to be built through there, in a casual way of conversation, but I never had any conversation with him and asked him about that land. I did not have to do it.
Q. You say when Benoit transferred this land to you that you did not know then whether he had other creditors except what he was owing on the land?
A. He might have owed other people, but I did not know it. As I understand that question, I should know if Mr. Benoit owed other people.

By the COURT:

Q. Did you know?
A. I did not know.

By Mr. GOUDEAU:

Q. Didn't you know that he was owing the Welsh National Bank?
A. He might have owed them money before the deal I did not know it. I know it after the deal, but before the deal I cannot recall the matter.
Q. You were living right there in Welsh, were you not?
A. I was, yes, sir.

Redirect examination by Mr. McCOY:

Q. Mr. Scharff is the letter marked "D-33" the only bona fide offer which you testified of having received for this land since you bought it?
A. In fact it is the only offer that I ever had.

Q. You received this letter in due course of mail?
A. I did.
Q. The L. Ward who wrote this letter what relation is he to
Ward who formerly sold this land to Mr. Benoit?
162 A. L. Ward is a brother of L. E. Ward, who sold thi
to Mr. Benoit. This man's name is Leavy and the
name is Leonide.

By Mr. McCoy: Offer in evidence letter from L. Ward to t
fendant under date of June 17th, 1908, marked "D-33."

By Mr. GOUDEAU: Objected to for the reason that it is irre
and immaterial to the issues of this case, and for the further r
that Plaintiff himself has testified that he would not take less
$15.00 an acre.

By the COURT: Objection overruled.

By Mr. McCoy:

Q. Mr. Scharff does that letter refer to the same tract of
that is involved in this suit?
A. It does.
Q. Mr. Scharff when Mr. Kinder was trustee of this bankr
originally did you see him in Welch any of the time?
A. Yes, we used to play a game of cards together once in a
and take a drink occasionally. Every day I used to meet him
He never refused it.
Q. Did he ever mention to you anything about this transac
A. He did not.
Q. Did you have any reason to conceal from him or anyone
the real facts in the case?
A. I never concealed any transaction I have ever made th
remember and I never concealed any particularly about
case.
163 Q. Did you have any reason to conceal anything about
A. I never concealed anything. There was nothing
conceal.
Q. Mr. Scharff in answer to one of the cross-interrogatories
stated something about a proposition of your paying all anyth
was worth and then offering to give the other half of the pr
would be preposterous, what did you mean by that?
A. Well, I mean by this that a tract of land in question was
to Ward for $5.00 an acre and from Ward the same day to B
for $7.50 an acre; that the true value of it was not what Mr. B
had paid for it, besides that land did not enhance in value. I
not think that a tract of land was worth more than $5.00 at the
set. I bought it for a speculation thinking that the future w
make Texas lands higher, and in consequence I thought it fa
for any business man to allow another to reap in the profits of
investments.
Q. Mr. Scharff, if you can, I wish you would tell the Court
exact words which you told Mr. Benoit after this transaction
closed, all about which you were to give him after you sold the la
if you made any profit.

By Mr. GOUDEAU: Objected as unnecessarily encumbering the records.

By the COURT: Overruled.

A. I said to Mr. Benoit when he told me that he had lost his money in that land that I would remember him, but as to how I could not tell myself, because I did not know to what extent that the lands would enhance, and my actions in the future would——

By Mr. McCOY:

161 Q. The question was what you told him.

A. That's all I told him; that if I did well with that piece of land that I would remember him.

Recross-examination by Mr. GOUDEAU:

Q. Hadn't Mr. Benoit already paid $6,000 on that land, Mr. Scharff?

A. I think so. I am not positive about that. The records should show that.

Q. You know that he paid part?

A. That's what's the consideration stated in the record. That may be a $2,000 note, there was a balance due of $6,000 with the interest on the note.

Q. There was four notes?

A. Of $1,000, I believe one of $500.

Q. That made $6,000?

A. I expect so, yes, sir.

Q. Then Benoit had paid $5,000 on the land already?

A. If he had paid $12,000 first.

Q. Yes, sir.

A. Yes, sir.

Q. Including the interest that he had paid on the land he was owing $6,500 at that time?

A. Probably so.

Q. Wasn't that as much as you were paying for it when you assumed the note?

A. I think I paid more than that. It amounted to more because I paid Mr. Labit the amount that he had paid in interest and taxes on this land.

By the COURT:

Q. $543.35?

A. Yes, sir.

By Mr. GOUDEAU:

165 Q. Now, was it a good business proposition for Mr. Benoit, after having paid over $6,000 on that land to deed it to you for nothing?

A. He would have eventually lost the land just the same if he hadn't paid for it.

Q. Did you keep in through the proposition that Robinson had made to him to take that land off of his hands?

A. I don't know anything about that proposition.
Q. You don't know anything about it?
A. Nothing more than he told me—and I am not responsible what Mr. Benoit does.
Q. Then as a matter of fact of Mr. Scharff Mr. Benoit had very nearly the same on the land as you did?
A. That's unfortunate for Mr. Benoit.
Q. That's not answering my question. Answer my question.
A. Not quite as much as——

By Mr. McCoy—Objected to as a matter of calculation.

By Mr. GOUDEAU:

Q. Was that a good business proposition for him to turn over to you for nothing?
A. I don't think it was a good business proposition. It was a very good business proposition for me to buy it, but I did speculation.

By Mr. McCOY

Q. Mr. Scharff you have been asked two or three times what paid on that land, what was the exact amount that you paid on it
A. Not figuring the interest from the time that I bought it now and not figuring the interest I had to pay before, it amount to $8,073.92.

By Mr. GOUDEAU:

Q. This includes all that you have paid since——
A. Yes, sir, the taxes that I paid to the State of Texas which not been paid by Labit and Benoit $127.22, for redemption to State of Texas, which is on record.
Q. Haven't you been getting some little revenue from that la
A. Yes.
Q. How much does that amount to?
A. $120 a year.
Q. Doesn't that pay the taxes that you have been paying?
A. Yes, on or about, or a little better.
Q. You did not credit that on the eight thousand dollars?
A. No, sir, but I don't believe I have been getting it any lon than three or four years.

By the COURT:

Q. Mr. Scharff I would like for you to detail out what you p the $8,000. You assumed $6,000 mortgage indebtedness, this mo gage of $500, second mortgage $513.00 and some rents, then terest and taxes due by Labit, now what else did you pay at the ti of that purchase?
A. I paid Labit Bros.
Q. Just enumerate it.
A. $513.35 note, L. E. Ward, $500 interest on same fr 11 21 02 to May 5th, 1904, $58.30. Taxes and redemption fr State of Texas, $122.20, Attorney's opinion, Wm. E. Austin, B

City, $25.00. Abstracting, $55.75. Paid Bank of Edna for two notes of $1,400 each—$2,800, interest 8% on $5,600, is $420, expenses, trip to Edna, $39.75, amount paid for taxes 1904, $17.45. Note Jos. Gerst, due Nov. 21st, 1905, $1,400. Note Jos. Gerst, due November 21st, 1906, $1,400 interest on two notes $1,400 each, $224.00. Bank of Edna difference, 2%, —notes overdue $21.00, expenses, trip to Edna, Team to H. Ansley, and for release from L. E. Ward and wife, $21.00. Dennis & Dennis, Attorney's opinion $17.50. J. N. Lebeau, Quit-Claim, $1.00. Expenses to Wharton, $13.00, amount paid for taxes 1905, $17.45, amount paid for taxes 1906, $17.30. Abstracting, Wm. E. Austin, Bay City, $37.07, $71.65, Taxes 1908, 1909, $127.22.

167

By the COURT:

Q. Then Mr. Scharff that amount that you have paid for what debts accrued by you in the way of interest, attorney's fees, abstract, etc., after you purchased, except the four notes of $1,400 each and $500 note and the $543.55 note and $1.00?

A. And redemption from the state of Texas.

Q. $122.00?

A. Yes, sir.

Q. The balance are debts that you have incurred since you purchased the property?

A. Yes, sir.

Q. Then the total price that you paid for the purchase are these six notes that you have enumerated?

A. Yes, sir.

Q. And then the redemption from Texas?

A. Yes, sir.

Q. Now I want to ask you one more question, you spoke of Ward telephoning you, that was just before the deal?

A. Yes, sir, I think that was after the deal.

Q. After the deal?

A. Yes, sir.

Q. Had nothing to do with it then?

Q. How did Benoit state the Robinson proposition to you—what proposition did he tell you that Mr. Robinson had made?

168

A. He said that Mr. Robinson had made him an offer for the land, and that he did not make it very clear to me and I really don't remember exactly any more now than he was to have a mortgage against the land in Calcasieu.

Q. Well, did he tell you how much Robinson was to allow on the Texas land in discount, how much an acre?

A. If he did I don't remember.

Q. Did he tell you at what price he was to sell the Calcasieu land?

A. He may have told me, but I don't remember.

Q. Mr. Scharff how could you have been in a position to advise him if it was a good proposition or not?

A. I did not advise him any further than advise the indebtedness against the land at that time.

Q. How could you advise him as to whether it was a good proposition or not without knowing what the indebtedness would be?

A. As a general way I feel about indebtedness, in some way cannot explain the nature, but I have a fear of indebtedness and advised to not become indebted in the matter. I would not become into indebtedness.

Q. You did not hesitate to assume an indebtedness?

A. I had the money in Bank. I paid it to him when it fell d

Q. Now Mr. Scharff, what was the value of that land per a that Mr. Robinson offered at that time?

A. Land in Calcasieu?

Q. Cash at that time?

A. Calcasieu land?

Q. Yes, sir.

A. I don't know. I am not a judge and could not tell.

Q. What is good rice land, convenient to irrigation worth in th neighborhood at that time?

169 A. I was not acquainted with the canal proposition. I w planting near Welsh from well systems.

Q. Did you know the value of the land around the country?

A. Not exactly.

Q. You don't know whether Mr. Robinson was asking more tha the land was worth when he was asking $30 an acre?

A. It was probably worth that much.

Q. Didn't he offer to take his Texas land at $10 an acre and el the other at $30 an acre?

A. He may have done so, but I cannot recall it. I know he aske me about it and I told him I would not become indebted on accoun of the very low prices of rice at that time.

Q. Mr. Labit had bought half of this land at $5,000 had he not

A. I don't know the consideration.

Q. He assumed the indebtedness?

A. Yes, sir, he assumed the indebtedness.

Q. Now the same day you bought the entire tract from Mr Benoit for four notes of $1,100 each and $500, second mortgage note of $543.32, that same day, to your knowledge Mr. Benoit bought back the other one half of that land for $6,543.32?

A. For that consideration, yes, sir, but the deal was made only in order to invest the —

Q. In order to enable him to let you have it at half that price?

A. No, in order to sell it to me.

Q. Then he was rebuying half of the property from Labit at nearly the same price for which you were buying the whole, was it not?

A. According to the figures, yes, sir.

Q. Wasn't the figures correct in that case? Wasn't it a

170 fact that that was the price?

A. That was the price that I paid, the same note.

Q. Wasn't that the price that Mr. Benoit paid Mr. Labit?

A. No, sir.

Q. Didn't he assume these same notes that you assumed?

A. Yes, sir, he assumed the same notes.

Q. But in assuming the same notes in buying from Labit he was only acquiring half of the property?

A. Yes, sir.
Q. While you got the whole, is that a fact?
A. Yes, sir, I got the whole.
Q. Now, Mr. Scharff, who was Labit, what was he doing?
A. He had a lumber yard in the town of Welsh.
Q. Did he have any property out there?
A. I don't know. I believe there is also a brother who was in with him.
Q. In this deal?
A. Who lives in Crowley.
Q. He had property?
A. I cannot tell that, I don't know.
Q. You know what his business was?
A. I think he was. I am not certain. I was not acquainted with the man very much.
Q. Of course, if you had not made this deal and the deal was not made with Robinson, then a foreclosure, in all probability would have followed by the creditors on this property, would it not?
A. As I have learned since.
Q. You did not know it then?
A. At the time I made the purchase I did not know.
Q. Then you did not know that Mr. Benoit had any reason to fear losing the land?
A. Well, he expressed himself that way. I don't know whether he had any reason to fear.
171
Q. Well, if there had been a foreclosure Mr. Benoit would have a claim against the Labit- wouldn't he?
A. I don't know that Judge.
Q. Wouldn't he hold a recourse on them if they failed to pay?
A. I did not know that, probably you are right.
Q. And by making this deal, transferring back to Mr. Benoit and Mr. Benoit transferring back to you he lost their recourse, in other words they freed Mr. Labit from the indebtedness, he was freed by the transaction?
A. I suppose so.

By Mr. Goudeau:

Q. Didn't you testify that previous to making this purchase that you had a telephone message from Mr. L. E. Ward telling you that they were thinking of foreclosing on this property?
A. I had a telephone message from Mr. Ward, but not previous to this deal.
Q. Was it after?
A. I think it was after. He wanted to know if I would buy that land and I telephoned to him that I had bought it.
Q. You are sure that that is correct, Mr. Scharff?
A. That's correct as I stated.

By the Court:

Q. When you bought that land or before buying it had you investigated it, examined it what was the value and condition?

A. I had a knowledge of the land by the description t
given me.

172 Q. You never saw it?

A. I never saw it. At one time I was near the lan

Q. At the time that this offer was made did you make any
to ascertain the condition of that land?

A. I was conversant with it at that time about the portion
land.

Q. You had been making some inquiries about the other

A. No, not particularly before that. I knew about all of t
before the deal.

Q. Did you know anything about its value?

A. Yes, I had an idea of the value at the time.

Q. How did you get that idea?

A. Why, I was in Texas before that.

Q. How long before that?

A. I was in Texas in 1901 or 1902 I think.

Q. While you were out in Texas in 1901 or 1902, did y
that land?

A. I was near the land as I stated before.

Q. Did you make any inquiry about it?

A. As I stated before I know from the conversation I ha
real estate men.

Witness excused.

Mr. CLEOPHA BENOIT recalled on behalf of Plaintiff, testi
follows:

By Mr. GOUDEAU:

Q. Mr. Benoit how much had you sold your land per acre
you sold it?

A. I sold it——

Q. In Calcasieu Parish?

173 By Mr. McCOY: Objected to as irrelevant and immat
and unnecessary repetition.

By the COURT: Let it go in.

A. I sold it for $25.00 and $30.

By Mr. GOUDEAU:

Q. Per acre?

A. Yes, sir.

Q. How many acres did you sell at $25.00?

A. I sold two hundred, or about three hundred if I reme
right.

Q. How many acres did you sell at $30?

A. Over three hundred.

Q. How long before this was that Mr. Robinson made yo
offer to exchange your Texas land for Calcasieu Land?

A. About two years, I believe, or three, I cannot remember

Q. How far is the land that Mr. Robinson offered to trade t
from the land that you sold?

A. About a mile and a half.

Q. What's the difference in the quality of the land that Mr. Robinson offered to trade you and the land that you sold?

A. Well he got better position for canal I had.

Q. He was on a——

A. Yes, sir, he got a canal dredge and marsh to cut the canal—and high land, and he got just as good land as I got and he got that better than I have. Maybe he got better land because I got a big gully that go through my land and he has'n't.

Q. Mr. Benoit when was the first time that you spoke to me
174 about this land transaction between you and Scharff?

A. Well, I cannot hardly tell you when the time——

Q. About how long before this first suit was brought against Mr. Scharff, do you remember?

A. Before?

Q. Yes, sir.

A. About two or three months before.

Q. Where was it that you spoke to me about the land?

A. Welsh depot.

Q. Do you remember what I was doing in Welsh on that day?

A. Yes, sir.

Q. What was I doing??

A. You come to see about Mr. Fauroux's business, something like that.

Q. You say it was on the day that I was taking the testimony of Mr. Fauroux in his case against——

A. Yes, sir.

Q. That day was on Sept-mber 17th, 1908, that was the day after that you refer to?

A. That's the same day, I don't remember the date, but I know it was the same date.

Q. When you spoke to me about this transaction between Mr. Scharff and yourself and asked me my opinion as to what could be done what did I tell you?

By Mr. McCoy: Objected to as irrelevant and immaterial and not binding upon the defendant in any way, and being only an advice of the attorney.

By the Court: The objection is overruled.

A. Well, you told me you could not do anything for me—
175 for myself, but you could do something for my creditors.

Q. Who was present when I told you that?

A. Mr. Fauroux was right there with me.

Q. And after I told you that what did you tell me?

A. I told you to go ahead and get it for my creditors if you could because I liked to see them paid.

Excused.

recover for him or not?
A. Yes, sir, I was present.
Q. Where was that?
A. At the depot.
Q. At Welsh?
A. Welsh, La.
Q. Did you hear what I told him in answer to his question
A. Yes, sir.
Q. What did I tell him?
A. You told him "Cleopha I cannot do anything for you
I can do something for your creditor."
Q. And what was Cleopha's answer?
A. Cleopha say "I am glad you do because I want to cle
my debt. I want to pay up."

Both sides rested, with leave granted to defendant to offe
depositions of Mr. P. D. Meaux when received.
Court adjourned until to-morrow morning at 9 o'clock.

176 On Thursday, May 5th, Court met pursuant to adjo
ment.

By Mr. Goudeau: Plaintiff offers in evidence debtor's pe
of Cleopha Benoit, filed on the 1st day of June, 1901, with lea
substitute certified copy, marked "P.—10."
By Mr. McCoy: Offer in evidence the testimony of D. P. M
taken under an alias commission by W. D. Wilson, Notary Pu
Matagorda County, Texas on May 3rd, 1910, marked "D.—37
By Mr. Goudeau: Objected to for the same reasons urged ag
the other depositions.
By the Court: Same ruling is given to the objections as to
other depositions.

Charles P. Martin being recalled on behalf of defendant, t
fied as follows:

By Mr. McCoy:

Q. I believe you stated in your direct examination that you w
in the real estate business in Welsh, in 1901?
A. I was.
Q. How long had you been in that business at Welsh?
A. About three years—that is connected with Davidson.
Q. Firm of Davidson & Martin?
A. Yes, sir.
Q. H. A. Davidson?

Q. Do you know the tract of land that Mr. Robinson was offering to exchange to Mr. Benoit for Mr. Benoit's tract of Texas land.

A. Yes, sir.

Q. What was the market value of that tract of land at that time—the tract that Robinson had offered to exchange to Benoit—at that time?

A. Between $10. and $12.00. Best lands been worked over several years.

Q. Now upon what do you base your valuation of this tract of land?

A. The quality of rice raised on it.

Q. Do you know of any other tracts of land of similar character being sold in that community about that time?

A. Yes, sir.

Q. Just state the considerations?

By Mr. Courreau: Objected to for the reason that the deeds would be the best evidence.

By the Court: Objection overruled.

A. The consideration only—$12.00.

By Mr. McCoy:

Q. How far was that land from the tract that Robinson was going to sell Benoit?

A. It joined it on the East.

Q. Same character of land?

A. Same about. Irrigated by the same canal.

Q. Mr. Martin, in your judgment would it have been possible for Mr. Robinson to have sold the tract of land he was offering to exchange to Mr. Benoit at that time for as much as $15.00 an acre?

178

By Mr. Courreau: Objected to for the reason that it is irrelevant and immaterial and for the further reason that it is only calling for the opinion of the witness.

By the Court: Objection sustained.

Witness consigned.

Cross-examination by Mr. Courreau:

Q. Mr. Martin how long have you known Mr. Scharff?

A. Twenty-two or twenty-three years.

Q. Have you in that length of time—in what way have you been connected with him?

A. Well, just like any other way, generally speaking. The first five years of my acquaintance with him I worked for him.

Q. Clerked in his store?

A. Yes, sir.

Q. And after that?
A. That's all.
Q. Did he sell out his business to you?
A. I bought his business.
Q. You are the same Charles P. Martin who is under-tutor for his child are you not?
A. Yes, sir.
Q. You and Mr. Scharff during that time were very close in business way and friendly way?
A. Friendly way, not business way.
Q. As a matter of fact Mr. Martin, didn't Mr. Scharff assist you materially in getting your business started?
A. No, sir.
179 Q. He did not?
A. He did not. We bought out the business and paid for it the valuation—every cent I owed him.
Q. You have been very close friend to him ever since?
A. I have been on friendly terms ever since.
Q. You are now?
A. I am now.

By Mr. McCoy:

Q. Mr. Martin you have been on friendly terms with Mr. Gardeau?
A. I have.
Q. Mr. Kinder, the trustee?
A. I have.
Q. How long have you known him.
A. Probably twenty years.
Q. Then you have been on friendly terms with Mr. Kinder all that time?
A. I have.
Q. How long have you known Mr. Benoit?
A. Twenty-one years.
Q. What have been your relations with him all that time?
A. Friendly.
Q. Does your friendship for anyone in this case influence your testimony at all?
A. It would not.
Q. Mr. Martin what was the occasion of the very low prices of land in the vicinity of Welsh at the time you speak of—1901?
A. Condition of the rice market.
Q. How did the prices of land at that time compare with the prices of land three years previous thereto?
A. Some of the land it affected them as much as 50%,
180 some more.

By the Court:

Q. Mr. Martin has that land been sold yet—that Robinson tract?
A. I understand it has been.
Q. You know at what price?

A. The consideration was $40 an acre including the canal.
Q. $40.00 an acre?
A. Yes, sir, that was including the canal and pumping plant—would figure about $37.00 an acre.
Q. Was the canal on that land?
A. Yes, sir.
Q. Was the canal on that land in 1904?
A. Yes, sir.
Q. How long ago was that sale made?
A. The Clark sale previous to——
Q. Previous to what?
A. The Clark sale was made previous to that.

By Mr. GOUDEAU:

Q. 1904?
A. Yes, I think.

By the COURT:

Q. That does not refer to the sale you are testifying about?
A. No.
Q. The same piece of land that Robinson was offering Mr. Benoit has been sold?
A. I understand it has been sold.
Q. Do you know what price?
A. I do not — the consideration as it was sold on crop liens.
Q. Mr. Martin were you in Welsh at the time of an auction sale by Mr. Benoit—that was mentioned here, one of the witnesses testified that Mr. Benoit had an auction sale just prior to going into
181 bankruptcy, do you remember that auction sale?
A. No, I do not, Judge.
Q. You remember anything of his selling out at cost or below cost anything of that kind?
A. No, sir, I do not.
Q. It may have been just after—do you remember any sale after this transaction?
A. Nothing, except the trustee sale that I remember.
Q. I mean before he went into bankruptcy?
A. Before he went into bankruptcy? No, sir.

By Mr. GOUDEAU:

Q. Mr. Martin what was your object in testifying that this land was sold at $40. an acre including the pumping plant and canal?
A. Because it was bought by Mr. Clark.
Q. Wasn't that sold previous to this adjudication in bankruptcy?
A. I don't think that that part of the land was previous to or was bought after that.
Q. Didn't you afterwards, upon being informed by Mr. McCoy, the attorney on the other side that this sale had been made previous to the adjudication in bankruptcy and didn't cover that land, didn't you change your testimony and said that you did not know the consideration that this land was sold?
A. If you allow me to make a statement I will explain that.

Q. I wish you would.

A. It's awful hard to remember the dates of these transactions. In the first place, the Clark farm, which includes the same piece of land referred to, has been sold dozens of time in the last twenty years, some parts of it, and it sold all the way from $10. to $50., and some of it included canal and pumping plants, and this piece included lands on which was never paid anything, and promises to pay one half or fourth of the crops. It was sold on the contract and those contracts, lots of them have been violated and a few of them have paid up.

Q. Is that all?

A. Yes, sir.

Q. Don't you know the value of this land before this Court is certain material and when you come and see it as a matter of facts and try to show to this Court that there was only a difference of $10. for the value of this land and the Court relying on your testimony, that that was injurious to this case, and not being sure of this why do you come and make such statements?

A. Because I have sold exactly same from Broussard to Benoit which joined this particular land on the east, that's the only

Q. That's not my question. Why did you make this statement as to the values of this land when you don't know—try to depreciate the values when you don't know?

A. I do know.

Q. Didn't you testify to the Court that you did not know the consideration?

A. Which consideration?

Q. For this particular piece of land?

A. I did know at the time it was sold several years afterwards. Four or five years afterwards, or more years. I don't know how long. That it has been sold since that was the consideration I received. It was offered to Benoit.

Q. In your answer to the Court you stated it had sold them in connection with the canal when you found out it was an error?

183 By the Court:

Q. You stated that a tract of land near that I understand

A. Adjoining.

Q. —Was sold $40. an acre including pumping plant?

A. Yes, sir.

Q. Now did this piece of land which was offered to Mr. Benoit by Mr. Robinson have a pumping plant on it?

A. No, sir, only water front.

By Mr. Gouaud:

Q. Mr. Martin who was that land sold to by Mr. Robinson, the one that contained the canal?

A. Do you want to know that from my own knowledge?

Q. Yes, sir, from your own personal knowledge?

A. I cannot tell you.

Q. You cannot tell me?

A. No, sir.

Q. How much was it sold for?

A. I cannot tell you that it was sold on crop lien contract.

Q. What land did it include?

A. Lands in Calcasieu Parish.

Q. What particular tract of land?

A. Known as the Clark farm.

Q. E. M. Clark Farm?

A. Yes, sir, or the Robinson farm at the time, or you may say the Old Daniel farm, because it changed hands about twelve times in the last twenty years.

Q. How long after this sale of the Daniel farm or the Robinson farm or the old Daniel farm, by either name that it may be known, was this tract of forty acres sold?

A. It wasn't sold all in one tract.

184 Q. In how many tracts was it sold?

A. I cannot say that

Q. Who was it sold to?

A. I am not positive as to the description, but there are Mr. Foster & Miller and somebody else own some of the land today, and also Mr. Willar.

Q. How much did they pay for it?

A. I cannot say that, it was sold on contract plan.

Q. What's the reason you seem to know so well the prices, the location, the quality of this land, whenever it is in Mr. Scharff's favor, but when it comes to pinning you down on the plaintiff's side to sentences and sales which have been made since that time you have forgotten all about it?

A. I have not forgotten about it. The questions are asked in a different sense.

Q. In other words it is the different sides that are propounding the questions?

A. In other words the questions are not asked in the same sense.

By the Court:

Q. Mr. Martin when Mr. Benoit went in bankruptcy it shows that he turned over no real estate, do you know of any real estate that he has or had at that time besides whatever rights he may have had in this contested piece?

A. Besides that?

Q. Yes, sir?

A. Not to my knowledge, except his residence property at Welsh.

Q. You stated, or somebody stated, that that was in his wife's name?

A. There is two houses that I under-stood was his. I don't know that from my own knowledge, but he always claimed them

185 and owns them today.

By Mr. McCoy:

Q. Had he sold the store building before he went in bankruptcy?

A. The store building?

Q. Yes, sir.

A. I don't remember whether that was before or after, but I think it was before.

Excused.

Mr. SCHARFF recalled on his own behalf, testified as follows:

By the COURT:

Q. Mr. Scharff, do you know anything of that auction sale that took place there at Benoit's store?

A. I don't know, Judge, that there was an auction sale.

Q. You know he was selling out his goods at cost or below cost for the purpose of raising funds to pay his debts?

A. No, sir, I did not know that. I was not very much in town at the time. I lived in Jennings and I made a trip between Jennings and my farm mostly.

Taking of evidence closed.

I hereby certify, That the above and foregoing contains a true and correct copy of the stenographic notes taken by me in the above matter, on the dates previously stated.

(Signed) J. V. PLAUCHE, Jr.,
Stenographer.

186 Extracts from the minutes of the Fifteenth Judicial District Court in and for the Parish of Calcasieu, State of Louisiana, in suit entitled James A. Kinder, trustee, vs. Edward Scharff et al., No. 7525 on the civil docket of above-styled court.

MONDAY, *March 14th*, 1910.

In this case, Wm. F. Schwing, Esq., sits as Judge ad hoc.
Motion to have exception stand as an answer filed.

TUESDAY, *March 17th*, 1910.

In this case Wm. F. Schwing, Esq., sits as Judge ad hoc.
Supplement to Exception of want of authority filed—Motion for exception to stand as an answer taken up, heard & submitted & is overruled—to which ruling counsel for Plaintiff excepts.

MONDAY, *March 21st*, 1910.

Wm. F. Schwing, Esqr., sits as Judge ad hoc.
Motion to have exception of want of authority filed by Defendant overruled Filed.

THURSDAY, *March 24th*, 1910.

Motion for rehearing filed—Pl'ff's counsel excepts to the filing of the motion—This case having been fixed for the 23rd. inst., testimony and evidence was heard by agreement of counsel in chambers, taken by Mr. W. H. Wilcox, stenographer, and case was submitted to the court—It is now ordered that the evidence then introduced be

filed as of this date in court and judgment is rendered overruling motion for rehearing prematurely filed—Counsel for defendants now withdraws motion for rehearing and requests to re-file it, which is granted.

MONDAY, *March 28th*, 1910.

W. F. Schwing, Esq., sits as Judge ad hoc.

Motion for rehearing on Exception of want of authority, taken up, argued and submitted and is overruled—To which ruling counsel for defendant excepts—Plea of Prescription filed and is referred to the merits—To which ruling counsel for defendant excepts, this to stand in lieu of a bill—and defendant is allowed until Thursday, April 31st, 1910, in which to file an answer.

THURSDAY, *March 31st*, 1910.

Wm. F. Schwing, Esqr., sits as Judge ad hoc.

Answer on the part of Ed. Scharff, filed—Fixed for May 3rd, 1910.

THURSDAY, *May 12th*, 1910.

Wm. F. Schwing, Esqr., sits as Judge ad hoc.

All the evidence introduced and all documents filed on the 3rd, and 5th of May, 1910, on the trial of this case in Chambers by ... are now ordered to be filed by the Clerk, Nunc Pro Tunc, of said date.

Judgment rendered on the 5th day of May, 1910, with oral reasons—See Decree—Judgment read and signed.

Counsel for plaintiff being present in open court, counsel for defendant moves for a Suspension and Devolutive Appeal to the Supreme Court of the State of La.

Appeal is granted upon appellant furnishing bond, is suspensive in the sum of $250.00 and if devolutive in the sum of $250.00—Appeal made returnable on or before June 8th, 1910.

In the District Court of the United States for the Western District of Louisiana.

No. 187. In Bankruptcy.

In the Matter of CLEOPHA BENOIT, Bankrupt.

Lake Charles, in said District, on the 29th Day of December, A. D., 1908. Before George S. Taylor, Referee in Bankruptcy.

It being the day appointed by the Court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the Lake Charles Press, we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed and who are present at this meeting, do hereby appoint James V. Carter of Lake Charles, to be the trustee of the said bankrupt's estate and effects.

Creditor.	Address.	Amount of d

Ordered, that the above appointment of trustee, be, and the s
is hereby approved.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy

Endorsed: No. 187. U. S. District Court. Western District
Louisiana. In Bankruptcy. In the matter of Cleophi Benoit, Ba
rupt. Election of Trustee by Creditors, at meeting duly held a
order from U. S. Judge reopening said proceeding. Offered in
dence in suit #7525 Mch 21, 1910.

189 I hereby certify that the above and foregoing two pa
contain a full and correct copy of the Original Appointme
of Trustee by Creditors now on file in my office in the matt
of Cleophi Benoit Bankrupt. #187.

Witness my hand as one of the referees of said Court, at La
Charles, in said district, this 23rd day of March, A. D. 1910.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

Filed in evidence May 3rd, 1910, in Suit No. 7525 and marke
"P. 1" & "P. 2." M. D. Andrus, Dy Clerk.

In the District Court of the United States for the Western Distric
of Louisiana.

Bond of Trustee.

Know all men by these presents: That we, J. A. Kinder, of Lak
Charles, La., as principal, and American Bonding Company o
Baltimore, as surety, are held and firmly bound unto the United
States of America in the sum of One Thousand dollars, in lawful
money of the United States, to be paid to the said United States, for
which payment, well and truly to be made, we bind ourselves and
our heirs, executors, and administrators, jointly and severally, by
these presents.

Signed and sealed this 4th day of January, A. D. 1909.

The condition of this obligation is such, that whereas the above
named J. A. Kinder was, on the 29th day of December, A. D. 1909,
appointed trustee in the case pending in bankruptcy in said Court,
wherein C. Benoit and Son is the bankrupt, and he, the said
190 J. A. Kinder has accepted said trust with all the duties and
obligations pertaining thereunto;

Now Therefore, if the said J. A. Kinder, trustee as aforesaid, shall
obey such orders as said Court may make in relation to said trust,
and shall faithfully and truly account for all moneys, assets and
effects of the estate of said bankrupt which shall come into his hands

and possession, and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void; otherwise, to remain in full force and virtue.

(Signed) J. A. KINDER.
AMERICAN BONDING COMPANY OF BALTIMORE.
[SEAL.] By WM. C. DUFOUR, *Local Vice President.*

Attest:
L. SIDNEY BELL.
Local Ass't Secretary.

Signed and sealed in presence of
——— ———.
——— ———.

Endorsed: No. 187. In Bankruptcy. In the matter of Cleopha Benoit, Bankrupt. Bond of Trustee. Filed at 11 o'clock A. M., this 8th day of January, 1909. George S. Taylor, Referee. Approved Jan. 6th, 1909. George S. Taylor, Referee. Offered in evidence in suit #7525 March 21, 1910. Marked P. 12.

I hereby certify that the above and foregoing is a true and correct copy of the Bond of Trustee and the endorsements thereon, now on file in my office.

Witness my hand as one of the referees of said Court, at Lake Charles, in said district, this 21st. day of March, A. D., 1910.

(Signed) GEORGE S. TAYLOR.
Referee in Bankruptcy.

Filed in evidence May 3rd, 1910, in Suit No. 7525 and marked "P-2". M. D. Andrus, Dy Clerk.

In the District Court of the United States for the Western District of Louisiana.

No. 187. In Bankruptcy.

In the Matter of CLEOPHA BENOIT, Bankrupt.

1904, June 4. On this day the petition of Cleopha Benoit praying to be adjudged a bankrupt, being heard it is ordered that he be adjudged a bankrupt, according to the provisions of the Acts of Congress relating to bankruptcy.

I hereby certify that the above and foregoing is a true and correct copy of the adjudication of the above-named bankrupt, as same appears upon the minute book kept by Thos. T. Taylor, late referee in bankruptcy.

Witness my hand as one of the referees of said Court, at Lake Charles, in said district, this 2nd. day of May, A. D. 1910.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

Filed in evidence May 3rd, in Suit No. 7525 and marked "P. 2" M. D. Andrus, D'y Clerk.

192

(A.)

In Bankruptcy. No. 187.

In the Matter of C. BENOIT & SON, Bankrupts.

J. A. KINDER, Trustee.

LAKE CHARLES, LA., *Dec. 5th*, 1904.

Total Sales of all goods appraised	$397.00	
Total Collections	111.62	
	$490.62	
Deposited in Lake Charles National Bank		$484.42
Expense paid out of Cash received account itemized		6.20
		$490.62
Checked out as per vouchers attached		216.80
Balance in Bank		267.62
Expenses paid out of receipts		6.20
		$490.62

Expenses Paid Out of Receipts.

1904.		
July 5th.	Postage Stamps	1.25
	Envelopes	.25
12.	Labor Cleaning Store	1.50
	Postage Stamps	.25
	Disinfectant	.20
14.	Paid for going after Horse	1.50
27.	Postages Stamps and Envelopes	1.25
		$6.20

Personal Expenses of J. A. Kinder, Trustee.

1904.			
July	1.	To Trustee's Bond	$5.00
		Railroad Fare to Welsh & return	1.40
	2.	Board	
		Two days at 2.50 per day	2.00
	5.	Railroad fare to Welsh & return	5.00
	9.	Board	1.40
193		Five days at 2.50 per day	7.00
	12.	Rail Road fare to Welsh & Return	12.50
	16.	Board 1½ days	1.40
		Five days at 2.50	7.00
	29.	Railroad Fare to Welsh & return	12.50
		Dinner 50c back 25c	1.40
		One Day	.50
Aug.	15.	Railroad fare to Welsh & Return	2.50
		Dinner 50c back 25c	1.40
		One Day	.75
	30.	Railroad fare to Welsh & return	2.50
		Dinner	1.40
		One Day	.50
Sept.	30.	Railroad fare to Welsh & return	2.50
		Dinner	1.40
		One Day	.50
		Commission on $190.00 at 6%	2.50
		Cr	73.05
			29.40
			102.45
By Check No. 3			25.00
By Check No. 13			60.00
			$85.00

194

In Bankruptcy. No. 187.

In the Matter of C. Benoit & Son, Bankrupts.

Lake Charles, La., *June* 21*st*, 1905.

In my report of Dec. 5th, 1904, I had a balance in bank of $267.62. Since that time I have paid the following expenses.

T. T. Taylor, Referee in Bankruptcy	$27.95	
J. A. Kinder, Trustee	17.45	
Winston Overton, Attorney for trustee	20.00	
Walter Jackson, Clerk of Court	26.00	
	$91.40	
Balance		$156.22

On the 13th day of May 1905 [illegible] Referee declared a divi
33 5 per cent. and I mailed checks to the following.

No. 1.	Rosichilds Hat Co., St. Louis, Mo	
No. 2.	Lewis Fister N. O. La	
No. 3.	Ohio Suspender Co., Mansfield, Ohio	
No. 4.	Water-Pierce Oil Co., Marshall, Tex	
No. 5.	D. M. Ferry & Co., Detroit, Mich	
No. 6.	Jacques Mfg. Co., Chicago, Ill	
No. 7.	H. T. Cottam & Co., N. O. La	
No. 8.	Southern Coffee Co., Galveston, Tex	
No. 9.	Berry Dennis & Co., N. O. La	
No. 10.	Steckler Seed Co., N. O. La	
No. 11.	Kemper Thomas Co., Cinn., O	
No. 12.	Elizabeth Bertrand, Welsh, La	
No. 13.	Geo. W. Caswell Co., San Francisco, Cal	
No. 14.	Lewis Bros. & Co., Houston, Tex	
	No. 15. Louisiana Tobacco Co., New Orleans, La	
195	No. 16. G. M. Knott, Clarence, La	
	No. 17. Simmons Hdwe. Co., St. Louis, Mo	
No. 18.	Underwood Typewriter Co., N. O. La	
No. 19.	Hughes Bros., Louisville, Ky	
No. 20.	Imperial Tobacco Works, Bedford City, Va	
No. 21.	New Era Mill Co., Arkansas City, Kan	
No. 22.	Southern Tobacco Co., N. O. La	
No. 23.	Houston Packing Co., Houston, Tex	
No. 24.	Enid Mill & Elevator Co., Enid, Okl	
No. 25.	Frank Cotton, Welsh, La	
No. 26.	Goodfellow Show Co., St. Louis, Mo	

$1

Less checks:

No. 8.	Southern Coffee Co., Galveston, Tex	8
No. 12.	Elizide Bertrand, Welsh, La	1
No. 19.	Hughes Bros., Louisville, Ky	
No. 22.	Southern Tobacco Co., New Orleans, La	
No. 24.	Frank Cotton, Welsh, La	

82

Have not yet been presented to the Bank and are still unpaid. Leaving a balance in the Lake Charles National Bank 85

I hereto attach all vouchers and bills.

Respectfully submitted,
(Signed) J. A. KINDER,
Trustee of C. Benoit & Son, Bankrupt

Sept. 1st, all paid but one $1

REF

196 In the District Court of the United States for the Western District of Louisiana.

In Bankruptcy. No. 187.

In the Matter of C. BENOIT & SON, Bankrupts.

On this 28th. day of June 1905 before me comes J. A. Kinder of Lake Charles, in the Parish of Calcasieu and the State of Louisiana and makes oath and says that he was, on the 1st. day of July, A. D., 1904, appointed Trustee of the estate and the effects of the above named Bankrupt, and that as such trustee he has conducted the settlement of said estate, that the account hereto annexed containing three sheets of paper, the first of which is marked with the letter (A) is true, and such account contains entries of every — of money received by said trustee on account of the estate and effects of the above named bankrupts, and the payments purporting in such account to have been made by said trustee have been so made by him, and he asks to be allowed for said payments and for commissions and expenses as charged in said accounts.

(Signed) J. A. KINDER, *Trustee.*

Subscribed and sworn to before me at Lake Charles, La., in said Western District of Louisiana, this 28th. day of June, A. D., 1905.

(Signed) THOS. T. TAYLOR,
Referee in Bankruptcy.

197 In filing this my final account in the above named bankruptcy I deem it my duty to lay before the Court some of the difficulties connected with the settlement of same. While the schedule showed book assets of about $8000.00 my collections have only been $111.62, and this has not been my fault, as I have worked diligently in trying to collect the accounts that were presented on the schedule, but in every account — the books that was over $20.00 I have been told by the debtor that the account had been settled and the fault of it having been on the schedule was all laxed to the bookkeeper and these statements were all proven by the bankrupt, the bookkeeper having conveniently left the country and I have not been able to find her. Previous to my taking charge of the estate the store had been positively gutted of everything of any value, and there was nothing left for me to sell. The glass counters the computing scales Typewriter, Delivery Wagon and Horse and everything of value had been sold previous to the surrender, and the assets such as they were, were unsalable. My attorney, Mr. Overton has ably assisted me in hunting for the assets that should have been, but we have been unable to find anything that was worth making a fight for, that we could hold. The bookkeeper who as the books show had been working for a salary of $30.00 per month until a month previous to the surrender, has been credited on the books for the last month, when the receipts had dropped to 1.10 of what they had been with $75.00 salary and carried on the schedule

the schedule as a privileged creditor for $155.55 when he is really indebted to the estate for monies collected after the surrender and which he had denied and refused to turn over to the trustee, and as he has nothing of his own and is a minor, it is impossible to collect of him.

Respectfully submitted.

(Signed) J. A. KINDER, *Trustee*.

In the District Court of the United States for the Western District of Louisiana.

In Bankruptcy. No. 187.

In the Matter of C. BENOIT & SON, Bankrupts.

The foregoing account having been presented for allowance, and having been examined and found correct, it is ordered that the same be allowed, and that the said trustee be discharged of his trust.

_____,

Referee in Bankruptcy.

199 In the District Court of the United States for the Western District of Louisiana.

In Bankruptcy. #184.

In the Matter of CLEOPHA BENOIT, Bankrupt.

At Lake Charles, in said district, on the 13th day of May, A. D. 1905.

A list of debts proved and claimed under the bankruptcy of Cleopha Benoit, with the first and final dividend, at the rate of 3 3 5%, this day declared thereon by Thos. T. Taylor, a referee in bankruptcy.

	Sum proved.	Div.
1. Roschthchild Bros. Hat Co., St. Louis, Mo...	208.25	7.49
2. Louis Pfister, 540 Magazine, N. O.....	66.97	2.41
3. Ohio Suspender Co., Mansfield, O.....	57.55	2.07
4. Water-Pierce Oil Co., Marshall, Tex.....	16.77	.60
5. D. M. Ferry & Co., Detroit, Mich.....	16.83	.60
6. Jacques Mfg. Co., Chicago, Ill.....	21.00	.65
7. H. T. Cottam & Co., N. O.....	179.51	6.46

12. Elizida Bertram, Welsh		13.46	.55
13. Geo. W. Caswell Co., San Francisco, Cal.		510.00	18.30
14. Lewis Bros. Co., Houston		66.00	2.40
15. La. Tobacco Co., N. O.		68.60	2.45
16. G. M. Knott, Clarence, La.		51.96	2.00
17. Simmons Hdw'e Co., St. Louis, Mo.		1,000.00	36.00
18. Underwood Typewriter, N. O.		105.20	3.18
19. Hughes & Sons, Louisville, Ky.		3.00	.10
20. Imperial Tob. Works, Bedford City, Kansas.		5.92	.20
21. New Era Mill Co., N. O.		4.81	.14
22. So. Tob. Co., N. O.		241.86	8.79
23. Houston Packing Co., Houston, Tex.		221.88	7.88
24. Enid Mill & Elv., Enid, Okla.		32.46	1.16
		485.30	17.46

200

25. Frank Cotton, Welsh		1.35	.04
26. Goodfellow-Brooks Shoe Co., St. Louis, Mo.		640.00	23.00

Endorsed: File No. 187. In Bankruptcy. List of Claims and Dividends. In the matter of Cleopha Benoit, Bankrupt. Filed at 3 o'clock P. M., this 28th day of June, 1905. Thos. T. Taylor, Referee. Filed in Evidence 5/3, 1910. In Suit No. 7525 and marked P 1. M. D. Andrus, Dy. Clerk. No. 187. U. S. District Court, Western District of Louisiana, in Bankruptcy. In the matter of C. Benoit & Sons, Bankrupts. Report of Trustee of Expenses of Adm. Filed 12/6/04. Thos. T. Taylor, Referee.

I hereby certify that the above and foregoing eight pages are a true and correct copy of the original report of Trustee of expense of administration, and a list of Claims and Dividends, in the matter of Cleopha Benoit, Bankrupt, now on file in my office.

Witness my hand as one of the referees of said Court, at Lake Charles, in said District, this 24th, day of May, A. D., 1910.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

201 United States District Court, Western District of Louisiana.

It is ordered that George S. Taylor, of Lake Charles, Calcasieu Parish, Louisiana, be and he is hereby appointed Referee in Bankruptcy for the United States District Court, Western District of Louisiana for the term of two years beginning February 19th, 1908; that all bankruptcy cases arising in the United States District Court in the Parishes in the Lake Charles and Opelousas group of Parishes, shall be referred to him by the Clerk of the U. S. District Court; That his bond is hereby fixed at One Thousand Dollars.

It is ordered further that this order be entered by the Clerk at Shreveport and a copy of it sent to the appointee.

(Signed) ALECK BOARMAN,
U. S. Judge.

Shreveport, Louisiana, February 19th., 1908.

Filed Feby 19th, 1908 W. Jackson, Clerk.

I hereby certify that the above and foregoing is a true, full and correct copy of the order appointing George S. Taylor, Esqr. of Lake Charles, La., Referee in Bankruptcy in all cases arising in the United States District Court in the Parishes returnable at Lake Charles and Opelousas, La., as the original of said is on file in my office.

Witness my hand and seal of office at the City of Shreveport, Louisiana, this 22nd. day of February, A. D. 1908.

(Signed) I. C. JACKSON,
Dy. Clerk, U. S. District Court,
[SEAL.] *Western District of Louisiana.*

Endorsed: Offered in evidence in suit #7525, March 21, 1910.

I hereby certify that the above and foregoing is a true and
202 correct copy of a duly certified copy of the Order appointing George S. Taylor, Referee in Bankruptcy for the United States District Court, Western District of Louisiana.

Witness my hand as one of the referees of said Court, at Lake Charles, in said district, this 21st day of March, A. D. 1910.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

Filed in Evidence, 3-21, 1910. In Suit No. 7525 and marked "P-10." (Signed) Eugene J. Levecque, Dy. Clerk.

203 SCHEDULE "A"

Statement of All Debts of Bankrupt.

No. 1. Creditors Who Are to be Paid in Full.

Wages of workmen and clerks.

Hattie Bower, Welsh, La., Salary		$63.63
Jim Hutchins, " " "		5.00
Dulva Benoit, " " "		155.36
		$223.99

his
(Signed) CLEOPHA x BENOIT, *Petitioner.*
mark.

No. (2) Creditor Holding Securities.

None.

No. (3) Creditor Who's Claims are Unsecured.

Boyard Oil Co., New Orleans, La.	
Mr. M. Watkins, Roanoke, La.	835.82
Ed. Lemoine, Welsh, La.	1.25
L. De Demares	6.50
Lyon Bros., Joplin, Mo.	5.53
F. W. Daniels, Welsh, La.	2.00
J. C. Spurgeon	20.25
Ohio Supply Co., Mansfield, O.	.50
George W. Crowell, San Francisco, Cal.	57.33
Louisiana Tobacco Co., New Orleans, La.	65.00
Case Drew & Co., New Orleans, La.	51.96
Landauer Meyers & Co.	10.20
Underwood Typewriter Co.	12.00
Imperial Tobacco Works, Bedford City, Va.	3.00
Louis Pfister, New Orleans, La.	1.80
Southern Coffee Co., Galveston, Tex.	66.97
Welsh National Bank, Welsh, La.	68.01
First National Bank,	810.00
Adam Bertram	500.00
Nat. Bee, Cleveland, O.	510.00
201 E. E. Kimball, Welsh, La.	2.000.00
A. H. Newcom.	150.00
Frank Cotton,	3.50
Thomas Eggan & Co., St. Louis, Mo.	6.00
M. Hughes, Louisville, Ky.	
Middleton Brooks, St. Louis, Mo.	1.45
First National Bank, Welsh, La.	
Benoit,	11.19
S. Mitchell,	372.95
E. Cooper,	21.75
Houston Packing Co., Lake Charles, La.	1.90
Berry Dennis Gro. Co., New Orleans, La.	32.16
Southern Tobacco Co.	233.77
J. T. Cottam & Co.	220.31
Hall-Jordan Gro. Co., Lake Charles, La.	179.51
Lober Pierce Oil Co., Marshall, Texas	119.88
Joel Bokenfor, New Orleans, La.	16.71
Rothschilds Bros. Hat Co., St. Louis, Mo.	25.15
Henry Pierce & Co., Rockford, Ill.	208.25
Simmons Hardware Co., St. Louis, Mo.	52.25
Southern Paper Co., New Orleans, La.	88.76
Cooper Thomas Gro. Co., Cinn., Ohio	1.95
Oddfellow Shoe Co., St. Louis, Mo.	10.51
D. Flashpellers, New Orleans, La.	121.81
Pierce & Co.	38.45
Steckler & Co.	319.76
	3.53

New Erie Milling Co., Arkansas City, Kansas	168.26
Lewis Bros., Houston, Tex	68.50
Acme Mfg. Co., Chicago, Ill	2.00
Jacques Mfg. Co. " "	21.00
Enid Mill & Elev. Co., Enid, Okla	185.30
Price Baker Mfg. Co., San Antonio, Texas	10.50
Jones Bros. & Co., Louisville, Ky	2.50
Total	$88.136.06

205

(Signed) his CLEOPHA x BENOIT, *Petitioner.* mark.

No. (4). Liabilities on Notes.

Balance on notes at Welsh First National Bank $231.36

Total $231.36

(Signed) his CLEOPHA x BENOIT, *Petitioner.* mark.

UNITED STATES OF AMERICA,
Western Dist. of Louisiana, Parish of Calcasieu.

On this 24th day of May A. D. 1904, before me personally came Cleopha Benoit, the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

(Signed) his CLEOPHA x BENOIT, *Petitioner.* mark.

Subscribed and sworn to before me, this 24th day of May, A. D. 1904.

(Signed) JERRY D. CLINE, *Notary Public.*

206

SCHEDULE "B."

Statement of All Property of Bankrupt.

No. "1." Real Estate.

None.

No. "2." Personal Property.

Household Goods and Furniture	$300.00
Stock of merchandise on hand	1,500.00
Total	$1,800.00

(Signed) his CLEOPHA x BENOIT, *Petitioner.* mark.

No. "3." Choses in Action.

A. Debts due petitioner on open accounts:

Mier & Boucher,	Welsh,	La.	
V. P. Patterson	"	"	$1.75
Auguste Louquoin,	"	"	1.70
John Balky,	"	"	.85
Mrs. Romero,	"	"	.50
C. B. Tower,	"	"	.20
J. L. Beerly,	"	"	1.20
G. W. Patterson,	"	"	3.50
R. M. Gray,	"	"	2.83
F. Benoit,	"	"	.55
Percy Hebert,	"	"	28.20
Tutor Crader,	"	"	.25
Cooper Drug Co.,	"	"	36.20
John Strother,	"	"	1.20
A. D. Patterson,	"	"	2.40
W. N. Todd,	"	"	6.90
Duplex Deroner,	"	"	.50
Robert Lee,	"	"	10.00
Albert Loquion,	"	"	2.25
05 W. M. Gibbs,	Welsh,	La.	.25
Albert Simiffer,	"	"	$11.70
S. Russell,	"	"	.25
H. Anderson,	"	"	2.35
T. Jones,	"	"	2.15
George Gleick,	"	"	.05
Jules Gleick,	"	"	.50
Willie Carter,	"	"	2.00
W. Keifer,	"	"	4.40
a Houston,	"	"	.55
ry Brizendine,	"	"	1.55
Benoit,	"	"	1.50
stile Deroton,	"	"	2.50
R. Broussard,	"	"	8.26
Lafour,	"	"	16.95
Henry Hebert,	"	"	1.50
k Cotton,	"	"	.10
Moore,	"	"	.30
Fontenot,	"	"	.20
			.25

Notes.

and George T. Jacobs,	Joblin,	La.	$800.00
Bertram Estate,	Welsh,	La.	450.00
nd Granger,	"	"	325.00
Broussard Estate,	"	"	125.00
Smith,	"	"	126.00
Bertram,	"	"	75.00
Butler,	Lake Charles,	La.	20.00
in Remeaux,	Welsh,	La.	24.00
ugene Bertram Estate,	Welsh,	La.	56.26

Accounts.

	G. A. Bailey, Lake Charles, La.	66.55
	—— Roixseaux, Welsh, La.	15.75
	Frank Sholts, " "	10.00
208	Gerome Deremy, Welsh, La.	18.50
	Herb Troy, Houston, Tex.	13.25
	A. J. Bell, " "	2.05
	A. W. Buck, Manchester, La.	11.38
	E. F. Woods, " "	27.20
	Charles Coverdale, " "	6.85
	Joe Moore, " "	15.40
	Calcasieu Parish	.50
	W. M. Moore, Welsh, La.	29.55
	R. B. Gardner, " "	3.35
	James Jones, " "	18.45
	E. M. Grantfield, " "	25.15
	Jules Moore, Sr., " "	6.00
	Press Parsons, " "	10.70
	Abrede Baero, Ikeville, La.	11.85
	Ernest Bourgeois, Welsh, La.	6.00
	J. M. Hall, " "	4.15
	J. N. Troy, " "	3.00
	Winnfield Coley, Lake Charles, La.	3.00
	Jacob Bertram, Welsh, La.	51.00
	Nott Bros., " "	250.00
	Notes of customers	2,217.00
	Arville Bertram, Welsh, La.	200.00
	Arthur Billodeaux, " "	50.00
	Eugine Broussard, " "	200.00
	S. S. Jacobs, " "	17.05
	George Jacobs, " "	28.12
	Isaac Foreman, " "	3.00
	J. B. Singleton, " "	29.50
	Dr. Latour, " "	15.90
	F. R. De Shay, " "	2.55
	James Gleick, " "	26.77
	George Gleick, " "	18.80
	C. A. Rubeka, " "	11.40
	J. F. Parsons, " "	11.60
209	J. F. Snyder, Welsh, La.	15.20
	V. A. Sutter, " "	52.10
	Nelson Pero, " "	1.75
	M. L. Parlo " "	.55
	W. T. Lee, " "	.15
	B. F. Graves, " "	1.90
	H. E. Heald, " "	7.55
	George Sharpe, " "	25.00
	Mrs. K. Hubener, " "	.40
	W. E. Berlly, " "	.70
	H. M. West, " "	.75
	Father Francis Cools, " "	.10

Scott Carr,	"	"	
J. B. Rabichaux,	"	"	.65
George Carr,	Welsh,	La.	.50
Prentice & Prentice,			....
W. P. Spencer,	"	"	....
Denis Deronen,	"	"	1.55
Albert Comeaux,	"	"	110.15
A. L. Hebert,	"	"	.60
P. Goodreaux,	"	"	.70
I. Fontenot,	"	"	3.00
E. L. Kendall,	"	"	2.10
W. H. Lay,	"	"	4.25
F. Romero,	"	"	.50
O. F. Lerue,	"	"	.50
G. B. Ruther,	"	"	2.25
W. H. Patterson,	"	"	.25
J. M. Patterson,	"	"	2.90
M. B. Van Ness,	"	"	2.80
John Boyle,	"	"	19.25
C. E. Taylor & Co.,	"	"	6.15
F. A. Wiley,	"	"	.50
Felix Benoit,	"	"	6.90
T. P. Russell,	Welsh,	La.	36.25
R. E. Taylor,	"	"	827.00
Frank Malone,	"	"	12.45
A. E. Bell,	"	"	.75
Henry Day,	"	"	28.40
Harry Lee,	"	"	19.95
			.20
			22.30
Total,			$8,508.08

(Signed) his
CLEOPHA x BENOIT, *Petitioner.*
mark.

No. "4."

None.

No. "5." Property claimed to be exempted by the State Laws:

Household Goods and furniture, $300.00

Total, $300.00

(Signed) his
CLEOPHA x BENOIT, *Petitioner.*
mark.

UNITED STATES OF AMERICA,
Western Dist. of Louisiana, Parish of Calcasieu:

Before me, on this 24th day of May, A. D. 1904, personally came Cleopha Benoit, the person mentioned in who subscribed to the

foregoing schedule, and who, being first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress relating to Bankruptcy.

(Signed) his CLEOPHA x BENOIT, *Petitioner.* mark.

Subscribed and sworn to before me, at Lake Charles, La., this 24th day of May, A. D. 1904.

(Signed) JERRY D. CLINE, *Notary Public.*

211 *Summary of Debts and Assets.*

Schedule "A," No. 3. Wages	$223.99
Unsecured claims	8,127.66
No. 4. Liabilities on notes	251.36
Schedule "A," total	$8,602.01
Schedule "B," No. 2c. Stock in trade	$1,500.00
No. 2d. Household goods, &c	200.00
No. 2e. Debts due on open accounts and notes	8,508.08
Schedule "B," total	$10,308.08

212 To the Honorable Alex Boarman, Judge of the District Court of the United States for the Western District of Louisiana:

The petition of Cleopha Benoit, of Welsh, in the Parish of Calcasieu, and district and State of Louisiana, Merchant, respectfully represents:

That he has had his residence and done business for the greater portion of six months immediately next preceding the filing of this petition at Welsh within said Judicial District; that he owes debts which he is unable to pay in full; that he is willing to surrender all of his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefits of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked "A," and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts;

That the schedule hereto annexed, marked "B" and verified by your petitioner's oath contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts;

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

his
CLEOPHA x BENOIT,
mark.

(Signed) CLINE & CLINE, *Attorneys.*

Witness:
J. D. CLINE.

213 UNITED STATES OF AMERICA,
Western District of Louisiana, ss:

I Cleopha Benoit, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

his
(Signed) CLEOPHA x BENOIT, *Petitioner.*
mark.

Subscribed and sworn to before me this 24th day of May A. D., 1904.

(Signed) JERRY D. CLINE,
Notary Public.

A true copy attest.

Endorsed: File No. 187. In Bankruptcy. Debtor's Petition. In the matter of Cleopha Benoit, Bankrupt. Filed at 12 o'clock M. this 1st day of June, 1904. E. C. Jackson, Dy. Clerk. Cline and Cline, Attorneys. Filed in Evidence 5 5 1910. In Suit No. 7525 and marked "P-10." Eugene J. Le Vesque, Dy. Clerk.

I hereby certify that the above and foregoing eleven pages are a true and correct copy of Debtor's Petition and Schedule in the Matter of Cleopha Benoit, Bankrupt, now on file in my office.

Witness my hand as one of the referees of said Court, at Lake Charles, in said district, this 24th, day of May A. D. 1904.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

In the United States District Court for the Western District of Louisiana.

In the Matter of CLEOPHA BENOIT, Bankrupt.

The Honorable Aleck Boarman, Judge of said Court:

Now into Court, comes James A. Kinder, who with respect represents,

That he is and was the duly appointed and qualified Trustee in said Bankruptcy, and that same has been closed.

Now your appearer avers that he has just discovered that the bankrupt was the owner of some 1600 acres of land situated in the State of Texas, and on the 2nd. day of May 1904, that the said bankrupt, with the fraudulent intent to defraud his creditors, entered into an agreement with one Edward Scharff, of Welsh, Calcasieu, La., whereby the said Cleopha Benoit, transferred the title of the said property to the said Edward Scharff.

Appearer avers that he has discovered undisputed evidence to prove that the sale was not a Bona fide transaction, that no cash consideration was paid, and that in truth and in fact the title to the said property is still vested in Cleopha Benoit, or more properly, into your appearer as the Trustee in his bankruptcy proceedings.

215 Appearer shows that on the 1st day of June, 1904, *that* the said Cleopha Benoit filed his voluntary petition in bankruptcy, and that therefore, the sale was made less than one month before the bankruptcy proceedings.

Appearer further shows that it is necessary that the said Bankruptcy be re-opened and as it will require the services of an attorney to have said sale set aside, that L. A. Goudeau, attorney at law be appointed by your Honor to assist your appearer in the premises.

Wherefore, petitioner prays that the bankruptcy proceedings in bankruptcy of Cleopha Benoit, No. 187 of the Docket of your Honorable Court, be ordered reopened, that he be furnished counsel to assist him in the matters connected therewith, and that your Honor appoint L. A. Goudeau, Attorney at Law, as the Attorney to assist him.

For all such orders and decrees as may be necessary in the premises, and for full general and equitable relief.

(Signed) J. A. KINDER, *Trustee*.

Let orders as to re-opening the said Bankruptcy Proceeding. And as to appointment of an Att'y to represent Trustee be granted as prayed for.

Oct. 17, 1908.

(Signed) ALECK BOARMAN, *Judge*.

The above order being duly considered the Bankruptcy No. 187 Cleopha Benoit & Son is hereby reopened, and L. A. Goudeau is hereby appointed attorney to represent the Trustee. Dated December 21st, 1908.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

216 Endorsements: No. 187. In re Bankruptcy of Cleopha Benoit. Petition of Trustee to have matter reopened. Filed this 15th. day of October, 1908, at 10:55 o'clock A. M., George S. Taylor, Referee.

I hereby certify that the above and foregoing two pages contain a full and correct copy of the original petition of Trustee to have

matter re-opened, and the orders thereon, now on file in my office in the proceeding of Cleophe Benoit Bankrupt No. 187.

Witness my hand as one of the referees of said court, at Lake Charles, in said district, this 22d. day of March, A. D., 1910.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

In the United States District Court for the Western District of Louisiana.

In re CLEOPHA BENOIT, Bankrupt. No. 187.

To the Honorable Geo. S. Taylor, Referee:

The petition of James A. Kinder, the duly appointed and qualified Trustee in the above Bankruptcy, with respect represents:

That this case, after having been closed, was on the 17th. day of Oct. 1908 ordered re-opened by the Honorable Aleck Boarman, Judge of said Court, for the purpose of bringing suit for the recovery of some 1300 acres of land which belonged to the Bankrupt, but which he attempted to keep out of said bankruptcy proceedings by a fraudulent transfer to one Edward Scharff.

17. Petitioner further represents that it is necessary to institute legal proceedings in the Fifteenth Judicial District Court of the Parish of Calcasieu, La., to have the said fraudulent transfer set aside and annulled.

Wherefore, the premises considered, petitioner prays that he be granted authority to institute and prosecute the necessary legal proceedings to have the said sale set aside and annulled, and to have the title to said property vested in him as Trustee of the said bankruptcy. For all such orders as may be necessary in the premises. And for full general and equitable relief.

(Signed) L. A. GOUDEAU,
Atty for Petitioner.

Order.

The above petition, and the order of the Hon. Aleck Boarman, ordering the re-opening of the case for the object stated in this petition considered.

Authority is hereby granted to James A. Kinder, Trustee, in the above Bankruptcy, to file and prosecute to final judgment, all necessary legal proceedings to recover the above property for the Bankrupt estate of Cleophe Benoit.

Lake Charles, La., July 7th, 1909.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

Indorsed: No. 187. In re Cleophe Benoit. Petition for authority to institute suit to annul sale. Offered in evidence in Suit No. , March 21, 1910, and marked P-13.

I hereby certify that the above and foregoing is a true and correct
copy of the Petition for authority to institute suit to annul
218 sale, and the endorsements, now on file in my office in the
matter of No. 187, Cleophia Benoit, Bankrupt.

Witness my hand as one of the referees of said court, at Lake Charles, in said district, this 22nd. day of March, A. D., 1910.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

In the District Court of the United States for the Western District of Louisiana. — Division.

In Bankruptcy. No. 187.

In the Matter of CLEOPHIA BENOIT, Bankrupt.

Whereas, on the 1st day of June, A. D. 1904, a petition was filed to have Cleophia Benoit of Welsh Parish of Calcasieu and District aforesaid, adjudged a bankrupt, according to the provisions of the Acts of Congress relating to bankruptcy; and whereas the Judge of said Court was absent from this division of said district at the time of filing said petition;

It is thereupon ordered that the said matter be referred to Hon. Thos. T. Taylor one of the referees in Bankruptcy of this Court, to consider said petition and take such proceedings therein as are required by said acts; and that the said — — — shall attend before said referee on the — day of — A. D. at — Parish of — —, Louisiana.

219 Witness my hand and the seal of said Court, at Shreveport, La., in said District, on the 1st. day of June, A. D. 1904.

(Signed) E. C. JACKSON, *Dy. Clerk.* [SEAL.]

Endorsed: No. 187, in Bankruptcy. U. S. District Court, Western District of Louisiana, at —. In the matter of Cleophia Benoit, Bankrupt. Order of reference in Judge's absence. Opelousas Division, at Shreveport. E. C. Jackson, Dy. Clerk. 1st Meeting Crs. June 18th, at 9 A. M.

Filed in evidence in suit No. 7525, Fifteenth Judicial District, Parish of Calcasieu, State of Louisiana, entitled James A. Kinder, Trustee, vs. Edward Scharff. March 21, 1910.

I hereby certify that the above and foregoing is a true and correct copy of the Original Order of Reference in Judge's Absence, and endorsements thereon, now on file in my office.

Witness my hand as one of the referees of said Court, at Lake Charles, in said district, this 21st day of March, A. D., 1910.

(Signed) GEORGE S. TAYLOR,
Referee in Bankruptcy.

Filed in Evidence 3 21, 1910. In Suit No. 7525 and marked "D-10".

(Signed) EUGENE J. LEVEQUE, *Dy. Clerk.*

In the District Court of the United States for the Western District of Louisiana.

No. 184. In Bankruptcy.

In the Matter of CLEOPHA BENOIT & SON, Bankrupts.

220 At Lake Charles, Louisiana, on this 28th. day of June, A. D. 1907, the final account of James A. Kinder, Trustee in the above entitled matter came on for hearing and after due consideration and comparison of cancelled checks with the dividend list and other items of account the same was found correct; it is therefore ordered that said account be approved and that said Trustee be discharged of his trust.

Witness my hand the day above written.

THOS. T. TAYLOR,
Referee in Bankruptcy.

Endorsed: No. 184. U. S. District Court, Western District of Louisiana. In Bankruptcy. In the matter of C. Benoit & Son, Bankrupt. Order approving account and discharging trustee.

I, E. C. Jackson, Deputy Clerk of the United States District Court, Western District of Louisiana, do hereby certify that the above and foregoing page is a true, full and correct copy of the Order Approving Account and Discharging Trustee, in the matter of Cleopha Benoit & Son, Bankrupts, No. 187 on the Bankruptcy Docket of said Court, as the original of same appears on file in my office.

Witness my hand and the seal of office, this 18th day of Nov. A. D. 1908.

(Signed) E. C. JACKSON, *Dy. Clerk.* [SEAL.]

Filed in evidence May 3rd, 1910, in Suit No. 7525 and marked "D-11". M. D. Andrus, D'y Clerk.

221 In the District Court of the United States for the Western District of Louisiana.

In the Matter of CLEOPHA BENOIT, Bankrupt.

Whereas, Cleopha Benoit, of Welsh, in the Parish of Calcasieu, in said district, has been duly adjudged a bankrupt, under the Act of Congress relating to Bankruptcy, and appears to have complied with all the requirements of law in that behalf, it is therefore ordered by the Court that Cleopha Benoit be discharged from

Done and signed in open Court at the City of Shreveport the 18th. day of Nov. A. D., 1905. This judgment is to be if no opposition is filed within 20 days from date.

ALECK BOARMAN, *U. S. Judge*

Endorsed: No. 187. In the matter of Cleophia Benoit, Bankr Judgment of Discharge. Filed Novr. 18th, 1905. W. Jac Clerk.

I, E. C. Jackson, Dy. Clerk of the United States District C Western District of Louisiana, do hereby certify that the above foregoing page is a true, full and correct copy of the Judgment Discharge of Cleophia Benoit, Bankrupt, No. 187 on the B ruptcy Docket of said Court as the original of same appears on in my office.

Witness my hand and the seal of office, this 18th day of Nov ber, A. D. 1908.

[SEAL.]

E. C. JACKSON, *Dy. Clk.*

Filed in evidence May 3rd, 1910, in Suit No. 7525 and mar "D-12". M. D. Andrus, Dy. Clerk.

222

Eugene J. Wilson.
Louis J. Wilson.
Willie D. Wilson.

Eugene J. Wilson, L. J. & W. D. Wilson, Attorneys and Counse at Law.

Offices also at Brazoria, Texas; Angleton, Texas.

BAY CITY, TEXAS, *Oct. 12th*, 1901

Winston Overton, Esq., Lake Charles, La.

DEAR SIR: In reply to your inquiry of 10th inst., in regard what, if any, land Cleophis Benoit owned in Matagorda Coun We beg leave to report that our records show the land transactio of Cleophia Benoit to be as follows:

On Nov. 21, 1901, L. E. Ward and his wife, Minnie F. Wa conveyed to C. Benoit, the consideration recited in said deed bei $1,000.00 in cash, the assumption by said Benoit of five certa vendor lien notes executed by L. E. Ward to Joseph Gerst f $1,100.00 each, and the execution by C. Benoit of two notes f $500.00 each due and payable one and two years after date, t following described lands, viz:

1st. 320 acres originally granted to Andrew Scott, and describe

"X" bears N. 8.130 E. 1 varas. Thence N. 10 W. 2.134 varas to stake in the prairie. Thence N. 50 E. 572 varas to stake in prairie; Thence S. 10 E. 2.584 varas to forked ash tree marked "X" on west margin of the East Caranchua from which a live oak tree twenty four inches in diameter marked "X" bears N. 76.30 W. 1 varas. Thence down said stream with its meanders to the
223 place of beginning containing 320 acres

2nd. 640 acres originally granted to the heirs of Ebenezer Bean, and described by field notes as follows.

Beginning at a stake on west margin of the East Caranchua from which a pin-oak marked "X" eight inches in dia. bears N. 58 E. 2 varas and another pin oak eight inches in dia. marked "X" bears S. 58 W. 2 varas. Thence N. 10 W. 3592 varas to a stake in prairie. Thence S. 50 W. 950 varas to a stake in prairie. Thence S. 10 E. 3814 varas to forked ash marked "X" from which a live oak two feet in dia. marked "H" bears N. 10 W. 12 varas. Thence up said stream with its meanders to place of beginning.

3rd. 640 acres granted to heirs of Ebenezer Bean and described by field notes as follows.

Beginning at a leaning double live oak tree marked "X" on West margin of the East Caranchua from which a pin-oak tree 18 in in dia. marked "X" bears N. 17 W. 10 varas at a peach four inches in dia. marked "X" bears N. 2950 E. 12 varas. Thence N. 10 W. 3834 varas to a stake in prairie. Thence S. 50 W. 950 varas to a stake in prairie. Thence S. 10 E. 4014 varas to a stake in West margin of said stream from which a pin-oak tree eight inches in dia. marked "X" bears S. 58 W. 2 varas. Thence up said stream with its meanders to place of beginning.

On December 12th. 1902, C. Benoit conveys an undivided one-half of the above described tracts of land to Labit

On May 2nd. 1904, Frank C. Labit and Otis E. Labit, his wife, and J. Howard Labit and wife, Mae Labit, convey back said undivided one-half to Cleophis Benoit for following consideration, viz:- Benoit assumes payment of four notes of $1.100.00 each executed by L. E. Ward to Joseph Guest, due Nov. 21st. 1903, 1904, 1905, 1906, and also one note for $500.00 executed by Benoit to
224 L. E. Ward due Nov. 21st. 1903, and the execution by Benoit to Labits of one note for $543.55 due May 2nd. 1905.

On May 2nd. 1904, C. Benoit conveyed all of said land to Edward Scharff for consideration of $7.200.00.

Yours truly,

I, E. C. Jack, Deputy Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the above and foregoing two (2) pages is a true, full and correct copy of a document belonging in the record in the case of Cleophis Benoit,

Bankrupt, No. 187 on the bankruptcy docket of said Court, as t
original of same is in my office.

Witness my hand and seal of office at the City of Shreveport
Louisiana, this 18th, day of November, A. D., 1908.

(Signed) E. C. JACKSON,
[SEAL.] *Deputy Clerk U. S. District Court.*

Filed in evidence May 4", 1910, in suit No. 7525 and marke
"D-13." M. D. Andrus, D'y Clerk.

225 Eugene J. Wilson.
Louis J. Wilson.
Willie D. Wilson.

Eugene J. Wilson, L. J. & W. D. Wilson, Attorneys and Counselo
at Law.

Offices also at Brazoria, Texas; Angleton, Texas.

BAY CITY, TEXAS, *Oct. 19th*, '04.

Winston Overton, Esq., Lake Charles, La.

DEAR SIR: The consideration in deed from Benoit to Edwar
Scharff was the assumption by Scharff of four notes for $1,000.0
each executed by L. E. Ward to Gerst and also one note for $500.0
executed by Benoit to Ward, interest on notes being also assumed
The deed does not recite what the cash was, if any. Only says fo
$7,200.00 and then recites above assumptions. I do not know wher
L. E. Ward resides, but think you can find out by writing to some
one at Victoria, Texas.

Yours truly,
W. D. WILSON.

I, E. C. Jackson, Deputy Clerk of the United States District Court
Western District of Louisiana, do hereby certify that the above and
foregoing page is a true, full and correct copy of the letter of W. D.
Wilson, in the matter of Cleopha Benoit, Bankrupt, No. 187 on the
Bankruptcy Docket of said Court as the original appears in the
Record on file in my office.

Witness my hand and the Seal of office this 18th, day of Nov.
A. D., 1908.

(Signed) E. C. JACKSON,
[SEAL.] *D'y Clerk.*

Filed in evidence May 4", 1910, in Suit No. 7525 and marked
"D-14." M. D. Andrus, D'y Clerk.

226 15th Judicial District Court of Louisiana, Calcasieu Parish.

No. 7525.

J. A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

It is agreed by counsel for plaintiff and for Edward Scharff one of the defendants that the schedule of bankruptcy of Cleopha Benoit does not carry the property involved in this case as one of his assets, nor does it carry the defendant Edward Scharff as one of his creditors and that Scharff never appeared to prove a claim in the bankrupt proceedings.

Lake Charles, La., 6/17/09.

(Signed) L. A. GOUDEAU,
Att'y for Jas. A. Kinder, Trustee.
McCOY, MOSS & KNOX,
Att'ys for Defendant Edward Scharff.

Filed June 17th, 1909. Eugene J. Leveque, D'y Clerk.
Filed in evidence May 3rd, 1910, in suit No. 7525 and marked "D-15." M. D. Andrus, D'y Clerk.

THE STATE OF TEXAS,
County of Jackson:

Know all men by these presents: That we, Joseph Gerst and wife Martha E. Gerst of the County of Jackson, State of Texas, for and in consideration of the sum of Eight Thousand Dollars ($8,000.00) to us paid and secured to be paid by L. E. Ward of Jackson County, Texas, as follows:

227 One Thousand Dollars to us cash in hand paid the receipt of which is hereby acknowledged and the execution and delivery to Joseph Gerst of five (5) promissory notes of even date herewith each for the sum of Fourteen Hundred Dollars ($1,400.00) each payable on or before One, Two, Three, Four and five years after date respectively with interest at Eight per cent per annum and retaining a vendor's lien and usual Attorney's fee clause of ten per cent additional in case of default in payment of same or any part thereof, default in the payment of any note or interest thereon maturing all of said notes at option of the holder thereof, have granted sold and conveyed and by these presents do grant, sell and convey unto the said L. E. Ward of the County of Jackson aforesaid, all those certain tracts or parcels of land lying and being in the County of Matagorda, State of Texas, and being composed of three original surveys more particularly described as follows:—

First Tract. Three hundred and twenty acres originally granted to Andrew Scott and described by field notes as follows, to-wit:—

Beginning at a live oak tree marked "T" (on the W. margin of the

east fork of the Caranchua) from which a live oak 12 inc
diameter (marked "X") bears S. 68 E. 1½ vrs. and a pin oa
12 inches in diameter marked "X" bears N. 81 33 E. 1 varas,
N. 10 W. 2434 varas to stake in prairie, thence N. 50 E. 672
to stake in prairie, thence S. 40 E. 2584 varas to forked as
marked "A" on W. margin of the east Caranchua from which
oak tree 24 inches in diameter marked "X" bears N. 76 30
vara thence down said stream with its meanders to the place
ginning containing Three hundred and twenty acres of land
or less.

Second Tract. Six hundred and forty acres originally gran
the Heirs of Ebenezer Bean and described by field no
228 follows: Beginning at a stake on the W. margin of the
fork of the Caranchua from which a pin oak marked "
inches in diameter bears N. 58 E. 2 varas and another pin
inches in diameter marked "X" bears 58 W. 2 varas, thence
W. 3592 varas to stake in prairie thence S. 50 W. 950 varas to
in prairie, thence S. 40 E. 3942 varas to forked ash marked
from which a live oak 2 feet in diameter marked "H" bears
W. 12 varas thence up said stream with its meanders to pla
beginning containing 640 acres of land more or less.

Third Tract. Six Hundred and forty acres of land orig
granted to the Heirs of Ebenezer Bean and described in field
as follows. Beginning at a chaining double live oak tree ma
"X" on the west margin of East Caranchua from which a pin
tree 18 inches in diameter marked "X" bears N. 17 W. 10
and a peach 4 inches in diameter marked "X" bears N. 20
12 varas thence N. 10 W. 3134 vrs. to stake in prairie thenc
50 W. 950 varas to stake and mound thence S. 10 E. 3044
to a stake on West margin of said stream from which a pin
8 inches in diameter marked "X" bears 58 W. 2 varas thence
said stream with its meanders to the place of beginning contain
640 acres of land more or less.

To have and to hold the above described premises together w
all and singular the rights and appurtenances thereto in any
belonging unto the said L. E. Ward, his heirs and assigns for
and we do hereby bind ourselves, our heirs, executors and admi
trators to warrant and forever defend all and singular the
premises unto the said L. E. Ward, his heirs and assigns agai
every person whomsoever lawfully claiming or to claim the same
any part thereof.

But it is expressly agreed and stipulated that the vendor's lien
retained against the above described property, premises a
229 improvements until the above described five notes for $1,
each and all interest thereon are fully paid according to th
face and tenor, effect and reading when this deed shall become a
solute. And it is also expressly agreed and understood that t
above described premises are sold subject to a lease made by Jose
Gerst to Milton and Calvin Branch dated June 5th, 1901, and ru
ning one year from said date—said Calvin and Milton Branch r
serving therein the right to remove all improvements they may

have put on said premises for their use in feeding stock and cattle, they to have possession up to June 5th, 1902.

Witness our hands this the 21st day of November, A. D. 1901.

(Signed) JOSEPH GERST.
MARTHA O. GERST.

THE STATE OF TEXAS,
County of Jackson:

Before me, J. M. Lee, a Notary Public in and for Jackson County, Texas, on this day personally appeared Joseph Gerst and Martha E. Gerst, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they each executed the same for the purposes and considerations therein expressed.

And the said Martha E. Gerst, wife of said Joseph Gerst having been by me examined privily and apart from her husband and having the said instrument fully explained to her, she, the said Martha E. Gerst, acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purpose and considerations therein expressed and that she did not wish to retract it.

Given under my hand and seal of office this 21st. day of
230 November 1901.

(Signed) J. M. LEE. [SEAL.]
Notary Public Jackson County, Texas.

(Revenue Stamps amounting to $3.00 attached.)

THE STATE OF TEXAS,
County of Matagorda:

I, Geo. Austin, County Clerk in and for said County, do hereby certify that the foregoing instrument of writing dated the 21st day of Novr. 1901, with its certificate of authentication, was filed for record in my office the 22nd day of Novr. 1901, at 3 o'clock P. M., and duly recorded on the 30th day of Novr. 1901, at 11 o'clock A. M., in the Deed Records of said County, in Vol. 98 on pages 111-115-116 & 117.

Witness my hand and the seal of the County Court of said County, at office in Bay City, Texas, the day and year last above written.

(Signed) GEO. AUSTIN,
County Clerk, Matagorda County, Texas.
By W. L. McCOMLY, *Deputy.* [SEAL.]

Filed in evidence May 3rd, 1910, in Suit No. 7525 and marked "D-16" M. D. Andrus, Dy Clerk.

STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk 15th Jud. Dist. of La.

I hereby certify, that the within and foregoing is a true and
rect copy of the original deed of writing, offered in evidence
the trial of the cause, wherein James A. Kinder, Trus-
231 plaintiff, and Edward Scharff, et al, are defendants,
Civil Docket of above styled court, and which at the ti
the offering of said instruments in evidence, the privilege wa
tained on substituting certified copies that the original coul
withdrawn. This copy to be used in lieu of the original dee
writing this day withdrawn.

In testimony whereof, I hereunto set my hand — affix my se
office at Lake Charles, Louisiana, on this 9th day of May, A. D., 1

(Signed)
[SEAL.] EUGENE J. LEVEQUE,
Deputy Clerk of Court

THE STATE OF TEXAS,
County of Jackson:

Know all men by these Presents: That, I, L. E. Ward, joined
my wife, Minnie F. Ward of the County of Jackson, State of Te
for and in consideration of the sum of Twelve Thousand ($12,000.
Dollars, to me paid and secured to be paid by Cleofa Benoit as
lows: Four Thousand Dollars to me cash in hand paid the rec
of which is hereby acknowledged, the assumption by said Benoit
Five certain Vendor's lien notes executed by me to Joseph Gers
this date each for the sum of Fourteen Hundred Dollars ($1400.
and payable on or before One, Two, Three, four and five years af
date and bearing eight per cent interest payable annually aggre-
ing Seven Thousand Dollars, and the execution and delivery to
of Two certain promissory notes each for the sum of Five Hundr
Dollars, ($500.00) by said Cleofa Benoit, same due and payal
on or before One and Two years after date respectively and bearin
eight per cent interest payable annually —said notes assume
given as above aggregating the sum of Eight Thousand Do
232 lars ($8000.00) said five notes first above mentioned havi
been given by me as part payment of purchase money for th
premises herein conveyed and same retaining a vendor's lie
thereon—same being a first lien on said premises, have granted, sol
and conveyed, and by these presents do grant, sell and convey, unt
the said Cleofa Benoit, of the Parish of Calcasieu, State of Louisian
all those certain tracts or parcels of land lying and being in th
County of Matagorda, State of Texas, and being composed of thre
original surveys more particularly described as follows: First Tract
Three Hundred and Twenty acres originally granted to Andrew
Scott, and described by field notes as follows, to-wit: Beginning at
live oak tree marked "T" on the west margin of the east fork of the

Caranchua) from which a live oak 12 inches in diameter marked "X" bears S. 68 E. 1½ varas and a pin oak tree 12 inches in diameter marked "X" bears N. 81 30 E. 1 varas thence N. 10 W. 2434 varas to stake in prairie, thence N. 50 E. 672 vrs. to stake in prairie, thence S. 40 E. 2584 varas to forked ash tree marked "A" on West margin of the East Caranchua from which a live oak tree 24 inches in diameter marked "X" bears N. 76 30 W. 1 vara, thence down said stream with its meanders to the place of beginning containing Three hundred and twenty acres more or less; Second Tract: Six Hundred and forty acres originally granted to the Heirs of Ebenezer Bean and described by field notes as follows: Beginning at a stake on the west margin of the east fork of the Caranchua from which a pin oak marked "V" 8 inches in diameter bears N. 58 E. 2 varas and another pin oak 8 inches in diameter marked "X" bears S. 58 W. 2 varas, thence N. 40 W. 3592 varas to a stake in prairies thence S. 50 W. 950 varas to stake in prairie thence S. 40 E. 3942 varas to forked ash marked "A" from which a live oak 2 feet in diameter marked "H" bears N. 40 W. 12 varas, thence up said stream with its
233 meanders to place of beginning, containing 640 acres of land more or less.

Third Tract: Six hundred and forty acres of land originally granted to the Heirs of Ebenezer Bean and described by field notes as follows: Beginning at a leaning double live oak tree marked "X" on the west margin of east Caranchua from which a pin oak tree 18 inches in diameter marked "X" bears N. 17 W. 10 vrs. and a peach [illegible] inches in diameter marked "X" bears N. 29 30 E. 12 varas, thence N. 40 W. 3134 varas to stake in prairie, thence S. 50 W. 950 varas to stake and mound, thence S. 40 E. 1014 vrs. to stake on W. margin of said stream from which a pin oak 8 inches in diameter marked "S" bears S. 58 W. 2 varas, thence up said stream with its meanders to place of beginning containing 640 acres of land more or less; it is however expressly agreed and understood that the above land is sold subject to a lease made thereof to Milton and Calvin Branch expiring June 5th, 1902, said Branch's reserving the right to remove the improvements put on said land for feeding purposes by them during said lease.

To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Cleofe Benoit, his heirs and assigns forever. And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend, all and singular, the said premises, unto the said Cleofe Benoit, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

But it is expressly agreed and stipulated that the vendor's lien is retained against the above described property, premises and improvements until the above described notes and all interest
234 thereon are fully paid, according to their face and tenor, effect and reading, when this deed shall become absolute.

Witness my hand at Edna, this 21st. day of November, A. 1901.

(Signed) L. E. WARD
MINNIE F. WARD

Witnesses at Request of Grantor:
____ ____.
____ ____.

THE STATE OF TEXAS,
County of Jackson:

Before me, J. M. Lee, a Notary Public in and for Jackson County, Texas, on this day personally appeared L. E. Ward, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 21st. day of November, A. D. 1901.

[SEAL.] (Signed) J. M. LEE.
Notary Public in and for Jackson Co., Texas.

THE STATE OF TEXAS,
County of Jackson:

Before me, J. M. Lee, a Notary Public in and for Jackson County, Texas, on this day personally appeared Minnie F. Ward, wife of L. E. Ward, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same by me fully explained to her, she, the said she acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed
235 and that she did not wish to retract it.

Given under my hand and seal of office this 21st day of November, A. D. 1901.

[SEAL.] (Signed) J. M. LEE.
Notary Public in and for Jackson Co., Texas.

(Revenue Stamps amounting to $5.00 attached.)

THE STATE OF TEXAS,
County of Matagorda:

I, Geo. Austin, County Clerk in and for said County, do hereby certify that the foregoing instrument of writing, dated the 21st day of Nov'r, 1901, with its certificate of authentication, was filed for record in my office the 22nd day of Nov'r, 1901, at 3 o'clock p. m., and duly recorded on the 30th day of Nov'r, 1901, at 10 o'clock p. m., in the Deed Records of said County, in Vol. 8 on pages 447-448-449 & 450.

Witness my hand and the seal of the County Court of said County, at office in Bay City, Texas, the day and year last above written.

[SEAL.] (Signed) GEO. AUSTIN,
County Clerk, Matagorda County, Texas,
By W. L. McCOMLY, *Deputy.*

Filed in evidence May 3rd. 1940, in Suit No. 7525, and marked "D-47."

M. D. ANDRUS,
Dy Clerk.

236 STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk, 15th Jud. Dist. of La.

I hereby certify, that the within and foregoing is a true and correct copy of the original deed of writing, offered in evidence upon the trial of the cause, wherein James A. Kinder, Trustee, is plaintiff, and Edward Scharff, et al., are defendants, on the Civil Docket of above styled court, and which at the time of the offering of said instruments in evidence, the privilege was retained on substituting certified copies that the original could be withdrawn. This copy to be used in lieu of the original deed of writing this day withdrawn.

In testimony whereof, I hereunto set my hand, affix my seal of office at Lake Charles, Louisiana, on this 9th day of May, A. D. 1940.

[SEAL.] (Signed) EUGENE J. LEVEQUE,
Deputy Clerk of Court.

STATE OF LOUISIANA,
Parish of Calcasieu:

Know all men by these Presents That I, Cleophia Benoit and Della Benoit, his wife, born Deronen, of Welsh, of the Parish of Calcasieu, State of Louisiana, for and in consideration of the sum of Nineteen Hundred Dollars to me in hand paid by Frank C. Labit and J. H. Labit, have granted, sold and conveyed, and by these presents do grant, sell and convey, with full subrogation to all of our rights and actions of warranty against all former owners and vendors unto said Frank C. Labit and J. H. Labit of the Parish of Calcasieu, and State of Louisiana, all that certain lot or parcel of land
237 situated in the County of Matagorda, State of Texas, One-half undivided interest in and to the lands purchased by me from L. E. Ward and Minnie F. Ward and described as follows:

Composed of three original surveys more particularly described as follows:

First Tract: Three hundred and twenty acres originally granted to Andrew Scott and described by Field Notes as follows, to-wit: Beginning at a live oak tree marked "T" on the west margin of the East fork of the Caranchua from which a live oak 12 inches in diameter marked "X" bears S. 68 E. 1½ varas and a pin oak tree 12 inches in diameter marked "X" bears N. 81 30 E. 1 varas thence E. 10 W. 2434 varas to a stake in the prairie, thence N. 50 E. 672 varas to stake in prairie, thence S. 10 E. 2584 varas to forked ash tree marked "A" on west margin of the East Caranchua from which a live oak tree 24 inches in diameter marked "X" bears N. 76 30 W. 1 varas thence down said stream, with its meanders to the place of beginning containing Three Hundred and twenty acres more or less.

Second Tract: Six hundred and forty acres originally granted to the heirs of Ebenezer Bean and described by field notes as follows: Beginning at a stake on the West margin of the East fork of the

Caranchua from which a pin oak marked "V" 8 inches in diam
bears N. 58 E. 2 varas and another pin oak 8 inches in diam
marked "X" bears S. 58 W. 2 varas thence N. 40 W. 3592 varas
stake in the prairie, thence S. 50 W. 950 varas to a stake in pra
thence S. 40 E. 3942 varas to forked ash marked "A" from whi
live oak 2 feet in diameter marked "H" bears N. 40 W. 12
thence up said stream, with its meanders to place of beginning,
taining 640 acres of land more or less.

Third Tract: Six hundred forty acres of land originally gra
to the heirs of Ebenezer Bean described by field notes as
238 lows: Beginning at leaning double live oak tree marked
on the west margin of the east Caranchua from which
oak tree 18 inches in diameter marked "X" bears N. 17 W. 40
and a peach 4 inches in diameter marked "X" bears N. 29 30
varas, thence N. 40 W. 3131 varas to stake in prairie thence S. 50
950 varas to stake and mound, thence S. 40 E. 1011 varas to st
on W. margin of said stream from which a pin oak 8 inches
diameter marked "X" bears S. 58 W. 2 varas, thence up said
with its meanders to place of beginning containing 640 acres
land more or less.

Vendees herein assume and agree to pay as a balance of the pu
chase price the following notes: Four notes of Fourteen Hundr
Dollars executed by L. E. Ward to Joseph Gerst and due Two, Th
Four and Five years after their date, also one note of Five Hundr
Dollars executed by Cleopha Benoit favor L. E. Ward and due N
21, 1903, the said vendees assume the interest on all of said
from this date. Said notes being vendor lien notes on said proper

To have and to hold the above described premises, together wi
all and singular the rights and appurtenances thereto in anywis
belonging, unto the said purchaser and to their heirs and assi
forever; and I do hereby bind myself, my heirs, executors and
ministrators to warrant and forever defend, all and singular, th
said premises unto the said Frank C. Labit and J. H. Labit, the
heirs and assigns, against any person whomsoever lawfully cla
or to claim the same or any part thereof.

Witness my hand at Welsh, Louisiana, in the presence of C. E
Carr and F. L. Deshay, lawful witnesses, on this 6th day of October
Anno Domini, One Thousand nine hundred two.

239

(Signed) his
CLEOPHA x BENOIT
mark.
her
DELLA x BENOIT.
mark.
his
To authorize my wife, CLEOPHA x BENOIT.
mark.

Accepted: FRANK C. LABIT
J. H. LABIT.

Attest:
C. E. CARR.
F. L. DESHAY.

THE STATE OF LOUISIANA,
Parish of Calcasieu:

Before me, Lee E. Robinson, a Notary Public, in and for Parish of Calcasieu, Louisiana, on this day personally appeared, Cleopha Benoit, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge- to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 6" day of October, A. D., 1902.

(Signed)
[SEAL.] LEE E. ROBINSON.
Notary Public, Calcasieu Parish, Louisiana.

THE STATE OF LOUISIANA,
Parish of Calcasieu:

Before me, Lee E. Robinson, a Notary Public, in and for the Parish of Calcasieu, Louisiana, on this day personally appeared Della Benoit, born Deroueu, wife of Cleopha Benoit; known to me to be the person whose name is subscribed to the foregoing
240 instrument, and having been examined by me, privately and apart from her husband, and having the same fully explained to her she the said Della Benoit acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 6th day of October, A. D., 1902.

(Signed)
[SEAL.] LEE E. ROBINSON.
Notary Public, Calcasieu Parish, Louisiana.

THE STATE OF TEXAS,
County of Matagorda:

I, Geo. Austin, Clerk of the County Court of said County, do hereby certify that the foregoing instrument of writing dated on the 6 day of October A. D., 1902, with its certificate of Authentication, was filed for record in my office this 9" day of January, A. D. 1903, at 4 o'clock P. M., and duly recorded the 5" day of February, A. D., 1903, at 5 o'clock P. M. in the Deed Records of said County, in Volume 10 on pages 595, 596, 597 & 598.

Witness my hand and the seal of the County Court of said County at office in Bay City the day and year last above written.

(Signed)
[SEAL.] GEO. AUSTIN,
Clerk of County Court, Mata. County, Texas.

Filed in evidence May 3rd, 1910, in Suit No. 7525, and marked "D-18." M. D. Andrus, D'y Clerk.

241 STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk, 15th Jud. Dist. of La.

I hereby certify that the within and foregoing is a true and correct copy of the original deed of writing, offered in evidence on the trial of the cause wherein James A. Kinder, Trustee, is plaintiff and Edward Scharff et al. are defendants on the Civil Docket of the above styled court, and which at the time of the offering of said instrument in evidence, the privilege was retained on substituting certified copies that the original could be withdrawn. This copy to be used in lieu of the original deed of writing this day withdrawn.

In testimony whereof, I hereunto set my hand and affix the seal of office at Lake Charles, Louisiana, on this 9th day of May A. D. 1910.

(Signed) EUGENE J. LEVEQUE,
[SEAL.] *Deputy Clerk of Court.*

THE STATE OF LOUISIANA,
Parish of Calcasieu:

Know all men by these presents, That I, Frank C. Labit and Orie E. Labit, his wife, born Green, of the Parish of Acadia, State of Louisiana, and J. Howard Labit, and his wife, May Labit, born Stewart, of the Parish of Calcasieu, State of Louisiana, for and in consideration of the sum of Six Thousand Six hundred Forty Three and 35/100 Dollars, to us paid and secured by Cleopha Benoit as follows:—The execution and delivery to us one certain promissory note for the sum of Five hundred forty three and 35/100 Dollars ($543.35) by said Cleopha Benoit some due and payable on or before May 2nd, 1905, and bearing 8% per annum from maturity, said note being vendor's lien thereon and being second lien on said premises,

242 Have granted, sold and conveyed, and by these presents do grant, sell and convey with full subrogation of all of our rights and actions of warranty against all former owners and vendors unto the said Cleopha Benoit, of the Parish of Calcasieu and State of Louisiana, all that certain lot or parcel of land situated in the County of Nacogdoches, State of Texas, one half undivided interest in and to the same purchased by us from Cleopha Benoit and Delia Benoit, his wife, born Deromen, and described as follows:—

Composed of three original surveys, more particularly described as follows:—

First Tract:—Three hundred and twenty acres, originally granted to Andrew Scott and described by field notes as follows, to-wit: Beginning at a live oak tree marked "T" on the west margin of the East fork of the Caranchua from which a live oak twelve inches diameter marked "X" S. 68 E. 11½ varas and a pin oak tree two

inches in diameter marked "X" bears N. 81 30 E. 4 varas, thence N. 40 W. 2434 varas to a stake in the prairie, thence N. 50 E. 672 varas to stake in prairie, thence S. 40 E. 2584 varas to forked ash tree marked "X" on west margin of the East Caranchua from which a live oak tree twenty four inches in diameter marked "X" bears N. 76 30 W. 1 varas, thence down said stream with its meanders to the place of beginning, containing three hundred and twenty acres.

Second Tract.—Six hundred and forty acres, originally granted to the heirs of Ebenezer Beane, and described by field notes as follows:

Beginning at a stake on West margin of the East fork of the Caranchua from which a pin oak marked "X" eight inches in
243 diameter bears N. 58 E. 2 varas and another pin oak eight inches in diameter marked "X" bears S. 58 W. 2 varas, thence N. 40 W. 3592 varas to a stake in the prairie, thence S. 50 W. 950 to a stake in the prairie, thence S. 40 E. 3042 varas to forked ash marked "X" from which a live oak two feet in diameter marked "H" bears N. 40 W. 12 varas, thence up stream with its meanders to place of beginning, containing six hundred and forty acres more or less.

Third Tract.—Six hundred and forty acres originally granted to the heirs of Ebenezer Bean and described by field notes as follows: Beginning at a leaning double live oak tree marked "X" on the west margin of the East Caranchua from which a pin oak tree eighteen inches in diameter marked "X" bears N. 17 W. 10 varas at a peach four inches in diameter marked "X" bears N. 29 30 E. 12 varas, thence N. 40 W. 2424 varas to stake in the prairie, thence S. 50 W. 950 varas to stake and mound thence S. 40 E. 1041 varas to stake on west margin on the said stream, from which a pin oak eight inches in diameter marked "X" bears S. 58 W. 2 varas thence up said stream with its meanders to place of beginning, containing six hundred and forty acres.

Vendee assume and agree to pay as a balance of the purchase price the following notes: Three of fourteen hundred dollars ($1,400.00) each executed by I. E. Ward to Joseph Gerst and due respectively Nov. 21st 1902, 1904, 1905, and 1906, also one note for Five hundred dollars ($500.00) executed by vendee in favor of I. E. Ward and due Nov. 21st 1902, the said vendee assume the interest on all of said notes from this date, said notes being vendor's lien notes on said property.

To have and to hold the above described premises together
244 with all and singular, the rights and appurtenances in any wise belonging unto the said Cleophis Benoit, his heirs and assigns forever, and we do hereby bind ourselves and our heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Cleophis Benoit, his heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, but it is expressly agreed and stipulated that the vendor's lien is retained against above described premises and improvements until the above described notes and all interest thereon are fully paid according to their face and tenor, effect and reading when this deed shall become absolute.

S. H. LYONS.
WM. A. LYONS.
M. L. FARLOW.
A. R. MILLER.

STATE OF LOUISIANA,
Parish of Acadia:

Before, me, James L. Dorman, a Notary Public in and for Parish of Acadia, State of Louisiana, on this day personally and appeared Frank C. Labit, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed, given under my hand and seal of office this 2 day of May, 1901. A. D., 1901.

(Signed) JAMES L. DORMAN.
[SEAL.] *Notary Public, Acadia Parish, Louisiana.*

245 STATE OF LOUISIANA,
Parish of Acadia:

Before me, James L. Dorman, Notary Public, in and for Parish of Acadia, State of Louisiana, on this day personally and appeared, Mrs. Orie E. Labit, born Green, wife of Frank Labit, known to me to be the person whose name is subscribed to foregoing instrument and having been examined by me privately and apart from her husband, and having the same fully explained her, she the said Mrs. Orie E. Labit acknowledged such instrument to be her act and deed and declares that she had willingly signed same for the purposes and considerations therein expressed and she did not wish to retract it.

Given under my hand and seal of office this 2nd. day of May 1901.

(Signed) JAMES L. DORMAN.
[SEAL.] *Notary Public, Acadia Parish, Louisiana.*

STATE OF LOUISIANA,
Parish of Calcasieu:

Before me, Charles P. Martin, a Notary Public, in and for Parish of Calcasieu, State of Louisiana, on this day personally came and appeared J. H. Labit known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein

Parish of Calcasieu:

Before me, Charles P. Martin, Notary Public, in and for the Parish of Calcasieu, State of Louisiana, on this day personally came and appeared May Labit, born Stewart, wife of J. H. Labit, known to me to be the person whose name is subscribed to the foregoing instrument and having been examined by me privately and apart from her husband, and having the same fully explained to her, she the said May Labit acknowledged such instrument to be her act and deed and declares that she had willingly signed the same for the purposes and considerations therein expressed and that she did not wish to retract it.

Given under my hand and seal of office this 2nd day of May, 1904.

(Signed) CHAS. P. MARTIN. [SEAL.]
Notary Public, Calcasieu Parish, Louisiana.

THE STATE OF TEXAS,
County of Matagorda:

I, Geo. Austin, County Clerk, in and for said County, do hereby certify that the foregoing instrument of writing, dated the 2d day of May, 1904, with its certificate of authentication, was filed for record in my office the 3rd day of May, 1904, at 2 o'clock p. m., and duly recorded the 21st day of May, 1904, at 3 o'clock p. m., in the Deed Records of said County, in Vol. 13, on page 534 et seq.

Witness my hand and seal of County Court of said County, at Office in Bay City, Texas, the day and year last above mentioned.

(Signed) GEO. AUSTIN,
Clerk County Court, Matagorda County.
[SEAL.] By GEO. E. SERRILL,
Deputy.

Filed in evidence May 3rd, 1910, in Suit No. 7525, and
217 marked D-19." M. D. Andrus, Dy Clerk.

STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk, 15th Jud. Dist. of La.

I hereby certify, that the within and foregoing, is a true and correct copy of the original deed of writing, offered in evidence upon the trial of the cause wherein James A. Kinder, Trustee, is plaintiff, and Edward Scharff, et al., are defendants, on the Civil Docket of above styled Court, and which at the time of the offering of said instrument in evidence, the privilege was retained on substituting

certified copies that the original could be withdrawn. This copy to be used in lieu of the original deed of writing this day withdrawn.

In testimony whereof, I hereunto set my hand and affix my seal of office, at Lake Charles, La., on this 9th day of May, A. D. 1910.

(Signed) EUGENE J. LEVEQUE. [SEAL.]
Deputy Clerk of Court.

THE STATE OF TEXAS.
County of Jackson:

Whereas, on the twenty-first day of November, A. D. 1901, Joseph Gerst, and wife, Martha E. Gerst, did execute and deliver to L. E. Ward, a certain deed of conveyance, wherein the parties first named did convey to the party last named the following described tracts or parcels of land, to-wit; all those certain tracts or parcels of land lying and being in the County of Matagorda, State of Texas, and being composed of three original surveys more particularly described as follows; First tract 320 acres originally granted to 248
Andrew Scott and described by field notes as follows, to-wit; Beginning at a live oak tree marked "I" on the W. margin of the East fork of the Caranchua from which a live oak 12 inches in diameter (marked "X") bears S. 35 E. 6 vrs., and a pin oak tree 12 inches in diameter marked "X" brs. N. 81 33 E. 4 vrs., thence N. 40 W. 2434 vrs., to stake in prairie; thence N. 50 E. 672 vrs. to stake in prairie; thence S. 40 E. 2784 vrs. to forked ash tree marked E. on W. margin of the East Caranachua, from which a live oak tree 24 inches in diameter marked "X" brs. N. 76 30 W. 1 vara; thence down said stream with its meanders to the place of beginning containing 320 acres of land more or less.

Second Tract. 640 acres originally granted to the heirs of Ebenezer Bean and described by field notes as follows: Beginning at a stake on the W. margin of the east fork of the Caranchua from which a pin oak 8 inches in diameter marked "X" brs. S. 58 W. 2 vrs., thence N. 40 W. 3592 vrs. to stake in prairie; thence S. 50 W. 950 vrs. to stake in prairie; thence S. 40 E. 3492 vrs. to forked ash marked "A" from which a live oak 2 feet in diameter marked "H" bears N. 40 W. 12 vrs.; thence up said stream with its meanders to the place of beginning containing 640 acres of land more or less;

Third Tract. 640 acres of land originally granted to the heirs of Ebenezer Bean and described by field notes as follows, beginning at a (leaning double) live oak tree 12 inches in dia. mkd. "X" brs. N. 17 W. 10 vrs. and a peach marked 4 inches in dia. mkd. N. 29 30 E. 12 vrs.; thence N. 1 W. 3434 vrs. to stake in prairie; thence S. 50 W. 950 vrs., to stake and mound; thence S. 40 E. 4044 vrs. to stake on West margin of said stream from which a pin oak 8 inches in diameter marked "X" brs. S. 58 W. 2 varas; 249
thence up said stream to the place of beginning, containing 640 acres of land more or less; said deed of conveyance being recorded in the Deed Records of Matagorda County, Texas, in Vol. 8, p. 444.

And whereas as a part consideration for said land the said L. E. Ward did execute and deliver to the said Joseph Gerst and wife,

Martha E. Gerst, five certain promissory notes, each bearing even date with said deed, and payable to said Joseph Gerst, or order at Edna, Texas, each of said notes being for the sum of $1,100.00, bearing interest from date at 8% per annum, and due in their respective order in one, two, three, four, and five years after date hereof providing for the payment of 10% additional on the principal and interest thereof in the event of default in payment, and same were placed with an att'y and a Vendor's Lien was expressly retained in such deed to secure the payment of said promissory notes;

And whereas; said promissory notes have been fully paid off and discharged, both principal and interest, and at the time of their payment said notes were the property of the undersigned;

Now therefore, Know all Men by these Presents, That, I Martha E. Gerst, the duly qualified and acting Independent Executrix of the estate of Joseph Gerst, dec'd and acting in said capacity, and for myself individually, of the County of Jackson and State of Texas, for and in consideration of the premises and the full and final payment of said notes, have remised, released, quit claimed, discharged and acquitted, and by these presents do remise, release, quit claim, discharge and acquit unto the said E. E. Ward, his heirs and assigns, the Vendor's lien heretofore existing upon the land and premises aforesaid.

Witness my hand this 17th day of November, A. D. 270 1905.

(Signed) MARTHA E. GERST.
Acting for Herself and as Ind pendent Executrix of the Estate of Joseph Gerst, Deceased.

THE STATE OF TEXAS,
County of Wharton:

Before me, J. R. Bowen, J. P. and Ex Officio Notary Public in and for Wharton County, Texas, on this day personally appeared Mrs. Martha E. Gerst (a femme sole) known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 17th day of November, A. D. 1905.

[SEAL.] (Signed) J. R. BOWEN.
J. P. & Ex Officio Notary Public,
Wharton County, Texas.

THE STATE OF TEXAS,
County of Matagorda:

I, Geo. Austin, Clerk of the County Court of said County, do hereby certify that the above instrument of writing, dated on the 17th day of November, 1905, with its Certificate of Administration, was filed for record in my office, this 20th day of November, A. D. 1905, at 3 o'clock P. M., and duly recorded on the 25th day of November, A. D. 1905, at 12 o'clock M. in the records of said County in Volume 16 on pages 234, 235 & 236.

Witness my hand and the seal of the County Clerk of
251 County at office at Bay City, the day and year last
written.

(Signed) GEO. AUSTIN,
Clerk C. C., Matagorda County.

[SEAL.] By GEO. E. SERRELL,
Deputy.

Filed in evidence May 3, 1910, in Suit No. 7525 and marked "D-20." M. D. Andrus, D'y Clerk.

STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk, 15th Jud. Dist. of La.

I hereby certify, that the within and foregoing, is a true and correct copy of the original deed of writing, offered in evidence upon the trial of the cause wherein James A. Kinder, Trustee, is plaintiff and Edward Scharff, et al., are defendants, on the Civil Docket of above styled court; and which at the time of the offering of said instrument in evidence, the privilege — retained on substituting certified copies that the original could be withdrawn. This copy to be used in lieu of the original deed of writing this day withdrawn.

In testimony whereof, I hereunto set my hand and affix my seal of office, at Lake Charles, Louisiana, on this 9th day of May, A. D. 1910.

[SEAL.] EUGENE J. LEVEQUE,
Deputy Clerk of Court.

THE STATE OF TEXAS,
County of Jackson:

252 Whereas, on the 21st day of November, A. D. 1901, J. E. Ward and wife Minnie F. Ward, did execute and deliver to Cleopha Benoit a certain deed of conveyance, duly recorded in the records of Deeds for Matagorda County, Texas, in Book "S" page 447, wherein the parties first named did convey to the party last named the following described tracts or parcel of land, to-wit:

First Tract: 320 acres originally granted to Andrew Scott, and described by field notes as follows, to-wit: —Beginning at a live oak tree marked "T" (on the West margin of the East fork of Caranchua) from which a live oak 12 inches in diameter marked "X" bears S. 68 E. 1½ varas, and a pin oak tree 12 inches in diameter marked "X" bears N. 81 30 E. 4 vrs.; thence N. 10 W. 2434 vrs. to stake in prairie; thence N. 50 E. 672 vrs. to stake in prairie; thence S. 10 E. 2584 vrs. to forked ash tree 24 inches in diameter marked "A" on West margin of East Caranchua from which a live oak tree 24 inches in diameter marked "X" bears N. 76 30 W. 1 vara; thence down said stream with its meanders to the place of beginning containing 320 acres more or less;

Second Tract: 640 acres originally granted to the heirs of Ebenezer Bean, and described by field notes as follows:—Beginning at a stake on the West margin of the East fork of the Caranchua from which a pin oak 8 inches in diameter marked "X" bears S. 58 W. 2 vrs. thence N. 10 W. 3592 vrs. to a stake in prairie; thence S. 50 W. 950 vrs. to stake in prairie; thence S. 40 E. 3942 vrs. to forked ash marked "X" from which a live oak 2 feet in diameter marked "H" bears N. 10 W. 12 vrs.; thence up said stream with its meanders to place of beginning, containing 640 acres of land more or less;

Third Tract: 640 acres of land originally granted to the heirs of Ebenezer Bean, and described by field notes as follows:—Beginning at a leaning double live oak tree marked "X" on the West margin of East Caranchua from which a pin oak tree 18 inches in diameter marked "X" bears N. 17 W. 10 vrs., and a pecan 4 inches in diameter marked "X" bears N. 29 30 E. 12 vrs.; thence N. 10 W. 3131 vrs. to stake in prairie; thence S. 50 W. 950 vrs. to stake and mound; thence S. 40 E. 4044 vrs. to stake on W. margin of said stream from which a pin oak 8 inches in diameter marked "X" brs. S. 58 W. 2 vrs.; thence up said stream with its meanders to the place of beginning, containing 640 acres of land more or less.

And Whereas, as a part consideration for said land, the said Cleopha Benoit did execute and deliver to the said L. E. Ward and Minnie F. Ward two certain promissory notes each bearing even date with said deed, and payable to L. E. Ward, the first of said notes being due and payable on the 21st day of Nov. 1902, and the second of said notes being due and payable on the 21st day of November, 1903, and each of said notes being for the sum of Five Hundred Dollars, ($500.00) and bearing interest from their said date at the rate of 8% per annum, and a Vendor's lien was expressly retained in such deed to secure the payment of said promissory notes;

And whereas, said promissory notes have been fully paid off and discharged, both principal and interest, and at the time of their payment said notes were the property of the undersigned;

Now, therefore, Know all Men by These Presents, That we, the said L. E. Ward and wife, Minnie F. Ward of the County of Jackson and State of Texas, for and in consideration of the premises and the full and final payment of said notes, have remised, released, quit claimed, discharged and acquitted, and by these presents do remise, release, quit claim, discharge and acquit unto the said Cleopha Benoit, his heirs and assigns, the Vendor's lien heretofore existing upon the land and premises aforesaid.

Witness our hands this the 18th day of May, A. D., 1905.

(Signed)

L. E. WARD.

MINNIE F. WARD.

THE STATE OF TEXAS,

County of Jackson:

Before me, L. F. Wells, a Notary Public, in and for Jackson County, Texas, on this day personally appeared L. E. Ward and Minnie F. Ward, wife of said L. E. Ward, and known to me to be the

persons whose names are subscribed to the foregoing instrument
acknowledged to me that they executed the same for the pu
and consideration therein expressed. And the said Minnie F. W
wife of the said L. E. Ward having been examined by me pr
and apart from her husband, and having the same by me full
plained to her the said Minnie F. Ward acknowledged such in
ment to be her act and deed, and she declared that she had willi
signed the same for the purposes and consideration therein expre
and that she did not wish to retract it.

Given under my hand and seal of office, this 24th day of Au
A. D., 1905.

(Signed)
[SEAL.] L. F. WELLS,
Notary Public, Jackson County, Tex

THE STATE OF TEXAS,
County of Matagorda:

255 I, Geo. Austin, Clerk of the County Court of said Cou
do hereby certify that the above instrument of writing, d
on the 18th day of May, 1905, with its certificate of authe
cation, was filed for record in my office, this 20th day of Novem
A. D. 1905, at 2 o'clock P. M., and duly recorded this 21st day
November, A. D., 1905, at 6 o'clock P. M., in the Records of
County, in Volume 16 on pages 231 & 232.

Witness my hand and the seal of the County Court of
County, at office in Bay City the day and year last above written.

(Signed)
GEO. AUSTIN,
Clerk C. C. Matagorda County
[SEAL.] By GEO. E. SERRILL, *Deputy*

Filed in evidence May 3rd, 1910, in Suit No. 7525 and mark
"D-21." M. D. Andrus, Dy Clerk.

STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk, 15th Jud. Dist. of La.

I hereby certify that the within and foregoing is a true and co
rect copy of the original deed of writing, offered in evidence on
the trial of the cause, wherein James A. Kinder, Trustee, is plaintiff
and Edward Scharff, et al., are defendants, on the Civil Docket o
above styled court, and which at the time of the offering of sai
instruments in evidence, the privilege was retained on substituting
certified copies that the original could be withdrawn. This copy to
be used in lieu of the original deed of writing this day withdrawn.

In testimony whereof, I hereunto set my hand and affix my seal of
office at Lake Charles, Louisiana, on this 9th day of May, A. D.,
1910.

(Signed)
[SEAL.] EUGENE J. LEVEQUE,
Deputy Clerk of Court.

256 THE STATE OF LOUISIANA:

Parish of Calcasieu:

Whereas, on the 2nd day of May, A. D., 1904, Frank C. Labit and wife, Orie E. Labit, and J. H. Labit and wife, Mae Labit, did execute and deliver to Cleopha Benoit a certain deed of conveyance, duly recorded in the records of Deeds for Matagorda County, Texas, in Book "13" Page 534, wherein the parties first named did convey to the party last named the following described tracts or parcels of land, to-wit:—"1/2 undivided interest in and to the lands purchased by us from Cleopha Benoit and Delia Benoit, his wife, born Deronen, and described as follows:—Composed of three original surveys more particularly described as follows:—First tract:—320 acres originally granted to Andrew Scott, and described by field notes as follows:—Beginning at a live oak tree marked "I" on the West margin of the East fork of the Caranchua from which a live oak 12 inches in diameter marked "X" S. 68 E. 11 vrs. and a pin oak tree 12 inches in diameter marked "X" vrs. N. 81 30 E. 1 vrs.; thence N. 40 W. 2334 vrs., to a stake in prairie; thence N. 50 E. 672 vrs. to stake in prairie; thence S. 40 E. 2584 vrs. to forked ash tree marked "A" on West margin of East Caranchua from which a live oak tree 24 inches in diameter brs. N. 76 30 W. 1 vara; thence down said stream with its meanders to place of beginning containing 320 acres. Second tract:—640 acres originally granted to the heirs of Ebenezer Bean, and described by field notes as follows:—Beginning at a stake on the W. margin of the East fork of the Caranchua from which a pin oak marked "V" 8 inches in diameter, brs. N. 58 E. 2 vrs., and another pin oak 8 inches in diameter marked "X" brs. S. 58 W. 2 vrs.; thence N. 40 W. 3592 vrs. to a stake in the prairie; thence S. 50 W. 950 vrs.

257 to a stake in prairie; thence S. 40 E. 3912 vrs. to forked ash marked "A" from which a live oak 2 feet in diameter, marked "H" bears N. 40 W. 12 vrs.; thence up said stream with its meanders to place of beginning containing 640 more or less; Third tract:—640 acres originally granted to the heirs of Ebenezer Bean and described by field notes as follows:—Beginning at a leaning double live oak tree marked "X" on the West margin of East Caranchua from which a pin oak tree 18 inches in diameter marked "X" bears N. 17 W. 10 varas, and a peach 4 inches in diameter marked "X" bears N. brs. N. 29 30 E. 12 vrs.; thence N. 40 W. 3134 vrs. to stake in the prairie; thence S. 50 W. 950 vrs. to a stake and mound; thence S. 40 E. 4044 vrs. to stake on West margin of said stream from which a pin oak 8 inches in diameter marked "X" brs. S. 58 W. 2 vrs.; thence up said stream with its meanders to the place of beginning containing 640 acres; said tracts being the same land that was conveyed to us by Cleopha Benoit and wife Oct. 6th, 1902, by deed recorded in Book "10" p. 585 Deed Records Matagorda Co., Texas, and all of which said land so conveyed to us as aforesaid was by us reconveyed to said Cleopha Benoit by said deed Rec. in Vol. "13" p. 534 mentioned. And Whereas, as a part of consideration for said land the said Cleopha Benoit did execute and deliver to said F. C. Labit, Orie E. Labit, J. H. Labit, and Mae Labit one certain

promissory note for $543.35 bearing even date with said deed, payable to us the said F. C. Labit, Orie E. Labit, J. H. Labit, Mae Labit on the 2nd day of May, 1905, and bearing 8% interest per annum from maturity thereof and a Vendor's lien was expressly retained in such deed to secure the payment of said promissory note: And whereas, said promissory note has been fully paid and discharged, both principal and interest, and at the time of said payment said note was the property of the undersigned. Now

258 Therefore, Know all Men by these Presents, that we the said F. C. Labit and Orie Labit of the Parish of Acadia, State of Louisiana, and J. H. Labit and Mae Labit of the Parish of Calcasieu and State of Louisiana, for and in consideration of the premises and the full and final payment of said notes, have remised, released, quitclaimed, discharged and acquitted, and by these presents do remise, release, quit claim, discharge and acquit unto the said Chandler Bennoit, his heirs and assigns, the Vendor's lien heretofore existing upon the land and premises aforesaid.

Witness our hands this 12th day of September A. D., 1905.

(Signed)

FRANK C. LABIT.
ORRIE E. LABIT.
J. H. LABIT.
MAE LABIT.

Attest:

J. M. GREEN.
L. H. LYONS.

THE STATE OF LOUISIANA,
Parish of Acadia:

Before me, ——— ———, a Notary Public in and for Parish of Acadia, Louisiana, on this day personally appeared Frank C. Labit and Orie E. Labit, wife of said Frank C. Labit, and known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and considerations therein expressed. And the said Orie E. Labit, wife of the said Frank C. Labit, having been examined by me privily and apart from her husband and having the same by me fully explained to her, the said Orie E. Labit acknowledged such instrument to be her act and deed, and she declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

259 Given under my hand and seal of office, this 12th day of September, A. D., 1905.

(Signed)

L. L. LYONS.
[SEAL.] *Notary Public, Parish of Acadia, Louisiana.*

THE STATE OF TEXAS,
County of Orange:

Before me, J. T. Adams, a Notary Public, in and for Orange County, Texas, on this day personally appeared J. H. Labit and Mae Labit, wife of the said J. H. Labit, and known to me to be the

persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. And the said Mae Labit, wife of the said J. H. Labit, having been examined by me privily and apart from her husband, and having the same by me fully explained to her, the said Mae Labit acknowledged such instrument to me to be her act and deed, and she declared that she had willingly signed the same, for the purposes and consideration therein expressed and that she did not wish to retract it.

Given under my hand and seal of office this 14th day of Sept A. D., 1905.

(Signed)
[SEAL.] J. T. ADAMS,
Notary Public, Orange Co., Texas.

THE STATE OF TEXAS,
County of Matagorda:

I, Geo. Austin, County Clerk, in and for said County, do hereby certify that the foregoing instrument of writing, dated the 12th day of September, 1905, with its certificate of authentication, was filed for record in my office the 20th day of November, 1905, at 3 o'clock P. M., and duly recorded the 25th day of Nov., 1905, at 11 o'clock A. M., in the Deed Records of said County, in Vol. 74 on page 232 et *al*.

Witness my hand and seal of County Court of said County, at Office in Bay City, Texas, the day and year last above mentioned.

(Signed) GEO. AUSTIN,
Clerk County Court, Matagorda County.
[SEAL.] By GEO. E. SERRILL, *Deputy*.

Filed in evidence May 3rd, 1910, in Suit No. 7525 and marked "1622." M. D. Andrus, Dy Clerk.

STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk, 15th Jud. Dist. of La.

I hereby certify that the within and foregoing is a true and correct copy of the original deed of writing offered in evidence upon the trial of the cause, wherein James A. Kinder, Trustee, is plaintiff, and Edward Scharff, et al., are defendants, on the Civil Docket of above styled court, and which at the time of the offering of said instruments in evidence, the privilege was retained on substituting certified copies that the original could be withdrawn. This copy to be used in lieu of the original deed of writing this day withdrawn.

In testimony whereof, I hereunto set my hand — affix my seal of office at Lake Charles, Louisiana, on this 9th day of May, A. D. 1910.

(Signed)
[SEAL.] EUGENE J. LEVEQUE,
Deputy Clerk of Court.

261 THE STATE OF LOUISIANA,
Parish of Calcasieu:

Fifteenth Judicial District Court.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

The State of Louisiana and said Court to any duly qualified Notar Public in and for Matagorda County, States of Texas:

Know ye, That we, reposing confidence in your prudence and fidelity, do by these presents, give unto you authority, diligently examine: John L. Logan, James H. Logan, R. H. Rhodes and Hamil ton Jordan, in a certain suit now pending in said Court in whic James A. Kinder, Trustee, is Plaintiff and Edward Scharff et al. are Defendants, on the parts of said Defendants. Therefore we desp you, at certain times and places by you to be appointed for that pur pose, to cause the said witnesses to come before you, that you ther and then examine them upon their oath, first taken before you upon the Holy Evangelist; that you reduce the said examination to writ ing, and when you shall have so taken the same send it closed up and under seal to us, in our said Court, at the Court House, in town of Lake Charles, Calcasieu Parish, Louisiana, on or before May 3rd, 1910, and have you then and there this commission.

Witness the Honorable Winston Overton, Judge of said Court, this 26th day of April, 1910.

(Signed) EUGENE J. LEVEQUE,
Clerk of Court.

STATE OF LOUISIANA,
Parish of Calcasieu:

15th Judicial District Court.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

To the Honorable Judge of said Court:

262 Now comes Edward Scharff, one of the defendants in the above numbered and entitled cause, and with respect repre sents:

That in order to enable him to properly defend said cause it is necessary that he procure the testimony of John L. Logan, James H. Logan, R. H. Rhodes and Hamilton Jordan, all residents of Blessing, Texas; that in order to procure said testimony it is material and

necessary that an order issue from your Honorable Court directed to some duly commissioned and qualified notary public in and for the County of Matagorda and State of Texas, authorizing and directing him to take the deposition of said witnesses, reduce their answers to writing and make due return to this Court as the law directs.

Wherefore premises and annexed affidavit considered, appearer prays that a commission issue to any duly commissioned and qualified Notary Public in and for the County of Matagorda and State of Texas, authorizing and directing him to take the testimony of the above named witnesses to the annexed interrogatories and such cross interrogatories as may be propounded by the plaintiff, reduce said answers to writing and make due return to this Court upon a day to be fixed by your Honorable Court; for all necessary orders and decrees, and for full and general relief.

By his Attorneys.

(Signed) McCOY, MOSS & KNOX.

Service accepted and citation waived, but reserving all legal exceptions and objections to the admissibility of the evidence.

Apr. 26, 1910.

L. A. GOUDEAU,
Atty for J. A. Kinder, Trustee.

263 STATE OF LOUISIANA,
Parish of Calcasieu:

Before me, the undersigned authority, on this day personally came and appeared Charles A. McCoy, who on oath duly administered deposes and says:

That he is one of the attorneys for Edward Scharff, one of the defendants in the above numbered and entitled cause, appearer in the foregoing application; that he has read the same and that the facts and allegations thereof are true and correct to the best of his knowledge and belief.

(Signed) C. A. McCOY.

Sworn to and subscribed before me at Lake Charles, Louisiana, on this the 25th day of April, A. D., 1910.

(Signed)
[SEAL.] W. H. WILCOX,
Notary Public.

Order.

Foregoing petition and affidavit considered: It is hereby ordered that a commission issue directed to any duly commissioned and qualified notary public in and for Matagorda County, authorizing and directing him to take the testimony of the witnesses named in the foregoing application and make due return to this Court on or before May 2nd, A. D. 1910, as prayed for and according to law.

This done and signed at Lake Charles, Louisiana, on this the 25th day of April, A. D., 1910.

(Signed) W. E. SCHWING,
Judge ad hoc.

264 Interrogatories to be propounded to John L. Logan H. Logan, R. H. Rhodes and Hamilton Jordan, all of Blessing, Texas, on behalf of Edward Scharff, one of the ants in the suit of James A. Kinder, Trustee, vs. Edward et al., No. 7425 on the civil Docket of the 15th. Judicial Court in and for Calcasieu Parish, Louisiana; to be by and answered on oath, their answers reduced to writing and made to said Court:

Interrogatory number one: What is your name, age, and residence?

Interrogatory number two: What qualifications have you tify as a witness relative to the location and value of a of land in Matagorda County, Texas, known as the Grant and the grant to the heirs of Ebenezer Bean, follows:

First Tract:—Three hundred and twenty acres originally to Andrew Scott and described by field notes as follows, beginning at a live oak marked "I" on the west margin of fork of the Caranchua from which a live oak 12 inches in marked "X" bears S. 68 E. 1½ varas and a pin oak tree 12 in diameter marked "X" bears N. 81 30 E. 1 vara. Thence N. 2434 varas to a stake in the prairie, thence N. 50 E. 672 stake in prairie, thence S. 40 E. 2584 varas to forked ash tree "A" on west margin of the East Caranchua from which a tree 24 inches in diameter marked "X" bears N. 76 30 W. thence down said stream with its meanders to the place of beginning containing three hundred and twenty acres, more or less.

Second Tract:—Six hundred and forty acres, originally granted the heirs of Ebenezer Bean, and described by field notes as follows:

Beginning at a stake on the west margin of the east
265 the Caranchua from which a pin oak marked "X" s
diameter bears N. 58 E. 2 varas and another pin oak
in diameter marked "X" bears S. 58 W. 2 varas thence N.
3592 varas to a stake in the prairie, thence S. 50 W. 950 varas
stake in prairie, thence S. 40 E 3942 varas to forked ash
"A" from which a live oak 8 feet in diameter marked "H"
40 W. 12 varas, thence up the said stream with its meanders
of beginning, containing 640 acres of land more or less.

Third Tract: Six hundred forty acres of land originally
the heirs of Ebenezer Bean and described by field notes as
Beginning at a leaning double live oak tree marked "X" on the
margin of the east Caranchua from which a pin oak tree 18
in diameter marked "X" bears N. 17 W. 10 varas and a
inches in diameter marked "X" bears N. 20 30 E. 12 varas.
N. 40 W. 3134 varas to stake in prairie, thence S. 50 W. 950
stake and mound, thence S. 40 E. 4044 varas to stake on W.
of the said stream from which a pin oak 8 inches in diameter
"X" bears S. 58 W. 2 varas, thence up said stream with its
to place of beginning containing 640 acres of land more or
containing in all Sixteen hundred acres of land, more or less.

Interrogatory number three: How long have you been thus qualified?

Interrogatory number four? How much land do you own in the vicinity of this land?

Interrogatory number five: What portion of this land is what would be called good land and what portion is bad land? Explain the answer in detail.

Interrogatory number six: How can you *do* distinguish between good land and bad land?

Interrogatory number seven: Give an accurate description of the whole sixteen hundred acre tract of land.

Interrogatory number eight: What was a fair market value per acre of this whole tract on or about May 2nd, 1904? If this whole tract can be divided into different classes of land, please do so, and then state a fair market value per acre of each separate tract on or about May 2nd, 1904.

Interrogatory number nine: What was a fair value per acre of this whole tract at forced sale or by sale under the hammer on or about May 2nd, 1904? If this whole tract can be divided into tracts of different classes of land, please do so, and then state the value per acre of each separate tract at forced sale or by sale under the hammer on or about May 2nd 1904.

Interrogatory number ten: How have you arrived at the valuation given in answer to the foregoing interrogatories?

Interrogatory number eleven: What was the condition of the real estate market on or about May 2nd, 1904, as to land of the nature of that about which you have testified, situated in the same vicinity?

Interrogatory number twelve: Do you know Mr. Joseph Gerst?

Interrogatory number thirteen: State whether or not you ever had conversation or conversations with Mr. Joseph Gerst regarding this land?

Interrogatory number fourteen: If so, state as best you can the time and place of each of these conversations and the persons present at each.

Interrogatory number fifteen: Do you remember the substance of any of these conversations? or any of them?

Interrogatory number sixteen: Give the substance of any or all of said conversations of which you remember the substance.

Interrogatory number seventeen: How far is the Beaumont survey from the aforesaid sixteen hundred acre tract?

Interrogatory number eighteen: How large is the Beaumont survey?

Interrogatory number nineteen: Which is the better land, that in the sixteen hundred acre tract about which you have testified, or that in the Beaumont survey?

Interrogatory number twenty: What transactions or transfers with reference to the Beaumont survey took place during the early part of the year 1904, or about that time? Give the consideration that passed in these transactions.

Interrogatory number twenty-one: Compare the condition of the real estate market during 1904 for such land in small tracts with the market value for the same year for such land in large tracts.

such improvement or change?

Interrogatory number twenty-five: What railroad or railroads have been constructed through or near this sixteen hundred acre tract since May 2nd, 1901? Give approximately the date of commencement of constructions and completion of operation of such railroad. What effect, if any, has this railroad or these railroads had on the value of this land?

Interrogatory number twenty-six: How far was the nearest railroad from this sixteen hundred acre tract of May 2nd, 1901? the nearest railroad depot? How far is the nearest railroad from this sixteen hundred acre tract now? the nearest railroad depot now?

268

Interrogatory number twenty-seven: State any other fact that may be in your knowledge which will more fully explain the matters about which you have testified.

(Signed) McCOY, MOSS & KNOX.

Filed April 26th 1910. Eugene J. Leverpec Dy. Clerk.

269 In the Fifteenth Judicial District Court, Calcasieu Parish, Louisiana.

2725.

JAMES V. KENDER, Trustee,

vs.

EDWARD SCHARFF et als.

Before proceeding to cross examine the witness, plaintiff objects to direct interrogatory # 2, for the reason that it is irrelevant and immaterial to the issues involved in this case, the only question at issue being whether or not the sale from Cleophe Benoit, Bankrupt, to Edward Scharff was a true sale free and clear of such claims of the creditors of the said Cleophe Benoit, Bankrupt, and for the further reason, that if the defendant Scharff was a purchaser in good faith, the question as to the value of the land cannot affect the issues of this case, and if the sale was made as alleged and for the purpose set forth in plaintiff's petition, the title to the property was never legally vested in the defendant Scharff, and the value of the land could not in any manner affect the result flowing from such a transaction, and for the further and additional reason, that the price paid for the land by the defendant Cleophe Benoit, Bankrupt, as shown by his deed is the best evidence of what the property was worth at the time.

and

Same objections to No. 9, 10, 11 and 12, and the further and additional objection to No. 12 for the reason that the plaintiff was not present at the alleged conversation, and that Joseph Gerst is not a party to this suit, and the pretended conversation he may have had with third persons is inadmissible, irrelevant and immaterial.

To Nos. 14, 15 and 16 same objections as previously urged, as being conversation between third parties not interested in this suit, and being irrelevant and immaterial, and not binding on the plaintiff.

270 To interrogatories Nos. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, plaintiff objects as being irrelevant and immaterial to the issues in this case.

With full reservation to the objections and without in any manner waiving or abandoning them, plaintiff propounds the following interrogatories:

Cross-interrogatory No. 1.

How far is the land about which you have been testifying located from Blessing, Texas?

Cross-int. No. 2. Are you acquainted with J. E. Pierce, of Blessing, Texas?

Cross-int. No. 3. Do you know what the land which Mr. J. E. Pierce has subdivided consists of, Matagorda County, is situated? If so, please state how far from the land about which you have been testifying is the Pierce tract?

Cross-int. No. 4. How was the land about which you have been testifying, and the land about which you have been testifying? If so, please state the price at which you sold it?

Cross-int. No. 5. If you have testified that you have owned and sold land near the land about which you have been testifying, kindly state if your land was near the same kind of land, and of the same value as this tract?

Cross-int. No. 6. If you have testified that you are acquainted with the value of land in Matagorda County, or the land in question, please state to the best of your knowledge and belief, what is the present value of the said land?

Cross-int. No. 7. Do you know if it was a fact that one James A. Kinder, plaintiff herein, there was used for thirty years adjoining this land, and that same did some several years ago for numerous dollars an acre, and that there was
271 a thousand acres of the land at least worth thirty dollars an acre, and six hundred more worth twenty dollars an acre? And if you deny this please state what you did sell him?

Cross-int. No. 8. To E. H. Black and Hamilton Jordan: Is it or not a fact that you had a conversation with James A. Kinder,

plaintiff herein, less than a month ago, in which you stated that you had known this land all your lives and that it was worth thirty dollars an acre? If you deny this, please state what you did tell him?

Respectfully submitted,
(Signed) L. A. GOUDEAU,
Attorney for Trustee.

Filed April 26th, 1910.
EUGENE J. LEVEQUE,
Dy Clerk.

272 UNITED STATES OF AMERICA,
State of Louisiana, County of Calcasieu:

Cause Pending in Fifteenth Judicial District Court.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Be it known, that, acting under and by virtue of the annexed commission, issued in the above entitled and numbered suit, by the Fifteenth Judicial District Court, of the Parish of Calcasieu, State of Louisiana, and the authority in me vested, I, W. C. Carpenter, a Notary Public in and for the County of Matagorda, State of Texas, did cause to personally come and appear before me, on this the 29th day of April, A. D. 1910, at 2.40 o'clock, P. M., John L. Logan, one of the witnesses named in the commission, and after having first duly sworn him, upon the Holy Evangelist, to tell the whole truth and to truthfully answer the annexed direct and cross interrogatories, I did, then and there, propound to him the said interrogatories and cross interrogatories, to which he made answers as follows, to-wit:

To the first interrogatory he answers and says: My name is John L. Logan, 70 years of age, occupation, running livery stable, residence, Blessing, Texas.

To the second interrogatory he answers and says: I lived from 1876 to the year 1908 on land adjoining these tracts, the Carancha creek separating said tracts from my tracts. I know of its value from the fact of sales of other lands in the same community.

To the third interrogatory he answers and says: Thirty two years.

To the fourth interrogatory he answers and says: I do not now own any land in the vicinity of this land, but up to 1909 I owned 1750 acres of land adjoining this land.

273 To the fifth interrogatory he answers and says: I should think there is about 500 acres of good land in this tract, black hog-wallow land, possibly 600 acres of it. The rest of it has got considerable brush and live-oak runners, sandy land; poor land except some in the timber, may be 200 *hundred* acres in timber, would be pretty fair land if cleared.

To the sixth interrogatory he answers and says: By the look and color of it.

To the seventh interrogatory he answers and says: About the only additional description I can give is that the land is located about five miles southwest of the town of Blessing, west of the Carancahua Creek, and is unimproved, except that it has a small rough Californian box house, of two rooms on it.

To the eighth interrogatory he answers and says: About five or six dollars an acre. I divide this whole tract into two classes first a tract of between five and six hundred acres of open prairie, black and willow, the value of which I estimate to have been seven dollars per acre, the rest of said tract is of an inferior quality, covered with live-oak runners, some of it, and some by pretty good timber. And I think a fair market value for it on May 2, 1901, would be about three and one-half dollars per acre.

To the ninth interrogatory he answers and says: I think it would have brought five dollars per acre under the hammer at that time. It may not have brought anything, nobody had any money. In answer to the second subdivision of the interrogatory, I have to say that in answer to the eighth interrogatory I said this tract could be divided into two classes, and I do not know that there would be any difference in the price at forced sale or private sale.

To the tenth interrogatory he answers and says: By my familiarity with the land.

To the eleventh interrogatory he answers and says: It was stagnant, no demand for it except pasturage.

To the twelfth interrogatory he answers and says: I did know Mr. Joseph Gerst, he is dead now.

To the thirteenth interrogatory he answers and says: Numerous times.

To the fourteenth interrogatory he answers and says: I cannot remember particularly the times of the different conversations I had with him, but do know that I had conversations with him, about land at my house as well as on this land where he stayed, cannot recall the names of any persons who were present at these conversations.

To the fifteenth interrogatory he answers and says: Yes, I do.

To the sixteenth interrogatory he answers and says: In one of conversations I had with him at his place, he told me if I could his land for him at five dollars per acre, he would pay me 00 commissions for making the sale. At another conversation did me had authorized Leander Ward to sell this land for $7.00 ere and he would give Ward $150.00 commission for making ale, and he told me that Ward had sold the land for $7.00 an and had kept the difference and had also got the commissions. he was indignant about it. In a later conversation with him the sale of the land by Ward, I learned that the sale had been partly on a credit, and he told me that the purchasers were ing from the land some lumber that he had placed ther on, hat he did not want them to take anything else off of the land. e did not think that the purchasers could meet the second

payment and that he intended to foreclose on them if they did not.

To the seventeenth interrogatory he answers and says: About four or five miles north.

To the eighteenth interrogatory he answers and says: I believe it is about a quarter of a league.

To the nineteenth interrogatory he answers and says: I would class the two tracts as about equal value.

To the twentieth interrogatory he answers and says: I don't know.

275 To the twenty-first interrogatory he answers and says: Land was worth more in large tracts in 1904, than in small tracts.

To the twenty-second interrogatory he answers and says: I am not able to say whether it was prior or subsequent, but about that time, I knew of a tract about five miles from this land, of better average quality than this land, consisting of one thousand acres which sold for nineteen hundred dollars.

To the twenty-third interrogatory he answers and says: Yes, a railroad has been built and is being operated across this land.

To the twenty-fourth interrogatory he answers and says: It has enhanced the value of this land very materially.

To the twenty-fifth interrogatory he answers and says: The St. Louis, Brownsville & Mexican R. R. Do not remember the exact date, but think the road was constructed and in operation about three years ago. This increased the value of this land about two hundred per cent.

To the twenty-sixth interrogatory he answers and says: About five miles. One goes through the land. The nearest station is about two and one-half miles from the land.

To the twenty-seventh interrogatory he answers and says: I know of no further facts in the matter.

Cross-examination.

To the first cross interrogatory the witness answers and says: About five miles.

To the second cross interrogatory he answers and says: I am.

To the third cross interrogatory he answers and says: I do. The west line of the subdivided Pierce lands is about two and one-half miles from the east line of the Cross tract.

To the fourth cross interrogatory he answers and says: Yes, I owned and sold a tract adjoining this land on the fourteenth day of August, 1909, for nineteen dollars per acre.

To the fifth cross interrogatory he answers and says: My
276 land was of a better average than this and was worth more money.

To the sixth cross interrogatory he answers and says: I would say that the best class of this tract is worth $20.00 per acre, and the rest of it $10.00 per acre.

To the seventh cross interrogatory he answers and says: No, I did not tell him that, but told him that I had lived near this land from

1876 till about two years ago, and that I had sold my land in August, 1909, at $19.00 per acre. According to my recollection I told him that about 500 acres of this land was worth about $20.00 per acre and the rest of it about $10. per acre.

(Signed) JOHN L. LOGAN.

All of the above answers were reduced by me to writing in his presence and were then read over to said witness who persisted thereto, and were then signed by said witness in my presence.

In faith whereof, I have hereunto set my hand and seal of office, this the 29th day of April, A. D. 1910.

(SEAL.) (Signed) W. C. CARPENTER,
Notary Public, Matagorda County, Texas.

Filed in evidence May 3rd, 1910, in suit No. 7525 and marked "1925." M. D. Andrus, Dy Clerk.

177 UNITED STATES OF AMERICA,
State of Louisiana,
County of Calcasieu:

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Cause Pending in Fifteenth Judicial District Court.

Be it known, that acting under and by virtue of the annexed commission issued in the above entitled and numbered suit by the Fifteenth Judicial District Court of the Parish of Calcasieu, State of Louisiana, and the authority in me vested, I, W. C. Carpenter, a Notary Public in and for the County of Matagorda, State of Texas, did cause to personally come and appear before me on this the 29th day of April, A. D. 1910, at 8 o'clock P. M., James H. Logan, one of the witnesses named in the annexed commission and after having first duly sworn him, upon the Holy Evangelist, to tell the whole truth and to truthfully answer the annexed direct and cross-interrogatories, I did then and there propound to him the said interrogatories and cross-interrogatories to which he made answer as follows, to-wit:

To the first interrogatory he answers and says:
James H. Logan, forty-five years, Liveryman, Blessing, Tex.
To the second interrogatory he answers and says:
Lived for fifteen years within stone's throw of this land.
To the third interrogatory he answers and says:
About twenty five years.
To the fourth interrogatory he answers and says:
Undivided interest of about 200 acres in 1700 acres.
To the fifth interrogatory he answers and says:

I would say about 600 acres good land and the rest bad land.
call the 600 acres good land because it borders on the ri
278 and is black hog-wallow land and well drained; I would c
the rest of it bad land, because it is covered with brush,
sandy soil and is very flat with no drainage.

To the sixth interrogatory he answers and says:

By its appearance and location.

To the seventh interrogatory he answers and says:

As before stated about 600 acres open prairie land and the rest
it covered with brush, and some timber in spots.

To the eighth interrogatory he answers and says:

I consider Five dollars per acre a very fair market value for t
whole tract of land about said date; as before stated about 600 acr
of this land could be called good land and would probably ha
brought $7 per acre at said date and I think $3.50 per acre woul
have been a good price for the rest of it.

To the ninth interrogatory he answers and says:

About five dollars per acre. As before stated Seven for the goo
land and three and a half for the bad land.

To the tenth interrogatory he answers and says:

By estimation from its locality and the character of the soil.

To the eleventh interrogatory he answers and says:

No market for it.

To the twelfth interrogatory he answers and says:

Yes sir.

To the thirteenth interrogatory he answers and says:

Don't remember that I ever did.

To the fourteenth interrogatory he answers and says:

Fourteenth, fifteenth and sixteenth interrogatories are answered
by me answer to the thirteenth.

To the seventeenth interrogatory he answers and says:

About four miles.

To the eighteenth interrogatory he answers and says:

279 I don't know.

To the nineteenth interrogatory he answers and says:

Beaumont survey is better land.

To the twentieth interrogatory he answers and says:

Do not remember.

To the twenty-first interrogatory he answers and says:

I think large tracts were in better demand than small tracts at
that time and commanded better prices.

To the twenty-second interrogatory he answers and says:

Don't know of any actual transfers of land about that time, but
all inquiries were for large tracts, either for the purpose of cutting
them up for sale in smaller tracts, or for pasture purposes.

To the twenty-third interrogatory he answers and says:

Yes, there has.

To the twenty-fourth interrogatory he answers and says:

It has enhanced the value of the land.

To the twenty-fifth interrogatory he answers and says:

St. Louis, Brownsville & Mexican Railroad. Said road was com-

structed about four years ago. Had considerable effect toward enhancing the value of this land.

To the twenty-sixth interrogatory he answers and says:

About five miles. Depot about the same distance. There is a railroad running through it now. There is a switch but no depot on the road that runs through it, within about two miles of this land.

To the twenty-seventh interrogatory he answers and says:

I know of no other fact that I have not stated.

Cross-interrogatories.

To the first cross-interrogatory the witness answers and says:

About five miles.

280 To the second cross-interrogatory he answers and says:

Yes, sir.

To the third cross-interrogatory he answers and says:

Yes it is situated about three miles from this tract.

To the fourth cross-interrogatory he answers and says:

As stated in one of my answers to direct interrogatories that I owned an undivided 200 acres in 1700 acre tract near this land with my father John L. Logan, which we sold in August 1909 for nineteen dollars per acre.

To the fifth cross-interrogatory he answers and says:

My land was better quality of land than this tract and of more value.

To the sixth cross interrogatory he answers and says:

To take it all way through I consider it worth about twelve dollars per acre.

(Signed) JAMES H. LOGAN.

All of which above answers were reduced by me to writing in his presence and were then read to said witness who persisted therein and were then signed by said witness in my presence.

In faith whereof, I have hereunto set my hand and seal of office, this the 29th day of April A. D. 1910.

(Signed) W. C. CARPENTER,

[SEAL.] *Notary Public, Matagorda County, Texas.*

Filed in evidence May 3rd., 1910. In suit No. 7525 and marked "D-21" M. D. Andrus, Dy. Clerk.

THE STATE OF LOUISIANA,
Parish of Calcasieu:

Fifteenth Judicial District Court

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

The State of Louisiana and said Court to any duly qualified Notary Public, in and for Matagorda County, Texas:

281 Know ye, That we, reposing confidence in your prudence and fidelity, do by these presents, give unto you authority diligently to examine, Edgar Rugley, J. E. Pierce, T. J. Poole and D. P. Moore, all or any of them, in a certain suit now pending in said Court in which James A. Kinder, Trustee, is plaintiff and Edward Scharff, et al., are defendants, on the part of said Defendants. Therefore we desire you at certain times and places by you to be appointed for that purpose to cause the said witness to come before you, that you there and then examine them, and either of them, upon their oath, first taken before you upon the Holy Evangelist; that you reduce the said examination to writing, and when you shall have so taken the same send it closed up and under seal to us, in our said Court, at the Court house in town of Lake Charles, Calcasieu Parish, La., on or before May 3rd., 1910, and have you then and there this commission.

Witness the Honorable William F. Selwing, Judge ad Hoc of said Court, this 21st day of April 1910.

(Signed) EUGENE J. LEVEQUE,
[SEAL.] *Deputy Clerk.*

Filed in evidence May 2nd, 1910. In Suit No. 7525 and marked "D 26" M. D. Andrus, Dy Clerk.

15th Judicial District Court, State of Louisiana, Parish of Calcasieu

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

The petition of Edward Scharff, one of the defendants in the above numbered and entitled proceeding, with respect represents:

That the depositions of Edgar Rugley, J. E. Pierce, T. J. Poole and D. P. Moore, of Matagorda County, Texas; L. E. Ward of Jackson County, Texas, and Carl Fisk of Wharton County, Texas, are necessary and material for appearer to maintain his position
282 in the above numbered and entitled proceeding; that defendant is absent from the Parish of Calcasieu and State of Lou-

isiana, and that it is necessary for this application to be sworn to by one of his attorneys; that defendant is entitled to have two commissions issue directed to any duly qualified notary public in and for Matagorda County, Texas, ordering and commanding each of them to take the testimony of the depositions of all of said named residents of Matagorda County, Texas, or any of them; to have a commission issue to any duly qualified notary public for Jackson County, Texas, to take the deposition of said Carl Fisk; that said commissions should order and command said notaries public to take the depositions of said witnesses in answer to the interrogatories hereto attached and to such cross-interrogatories as plaintiff may propound, all on oath, and commit the same to writing and make due return thereof to this Honorable Court on or before a date to be fixed by this Honorable Court.

Wherefore, premises and annexed affidavit considered, defendant prays that such commissions issue, for all necessary orders and decrees and for full and general relief.

(Signed) By his Attorneys, McCOY, MOSS & KNOX.

Service accepted and citation waived, but reserving all legal exceptions and delays. 4/19/10.

(Signed)

L. A. GOUDEAU,
Attorney for J. A. Kinder, Trustee.

STATE OF LOUISIANA,
Parish of Calcasieu:

Before me, the undersigned authority, on this day personally came and appeared Robert L. Knox, who being duly sworn and on oath deposes and says:

That he is one of the attorneys for Edward Scharff, one of the defendants in the above numbered and entitled proceeding; that he is appearer in the foregoing application; that he has read the foregoing application and that the facts and allegations thereof are true and correct to the best of his knowledge and belief.

(Signed)

ROBT. L. KNOX.

Sworn to and subscribed before me at Lake Charles, Louisiana, on this the 19th. day of April, A. D. 1910.

(Signed)

[SEAL.] W. H. WILCOX,
Notary Public.

Order.

Foregoing application and affidavit considered, it is hereby ordered at the prayer of the applicant be and it is hereby granted; as prayed for and according to law; the commissions to be returnable on or before May 3rd, 1910.

Lake Charles, Louisiana, April 21, A. D. 1910.

(Signed)

W. F. SCHWING,
Judge ad hoc.

15th Judicial District Court, State of Louisiana, Parish of Calcasieu.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARLE et al.

Interrogatories to be propounded to Edgar Rugley, J. E. Dyer, T. J. Poole and D. P. Moore, of Matagorda County, Texas; J. E. Ward, of Jackson County, Texas, and Carl Fisk, of Wharton County, Texas, by virtue of the annexed commissions directed to any duly qualified notary public for their respective counties, to be by said person answered under oath, and their answers committed to writing by the notaries public and due return thereof made to this Court.

Interrogatory number one: What is your name, age, residence and occupation?

Interrogatory number two: What qualifications have you
284 as a witness on the value of the land known as the E. Bean surveys and the Andrew Scott survey, sixteen hundred acres in all, in Matagorda County, Texas, described as follows:

First tract. Three hundred and twenty acres originally granted to Andrew Scott and described by field notes as follows to-wit: Beginning at a live oak tree marked "T" on the west margin of the east fork of the Caranchua from which a live oak 12 inches in diameter marked "X" bear S. 68 E. 12½ varas and pin oak 12 inches in diameter marked "X" bears N. 81 30 E. 4 varas thence N. 40 W. 2434 varas to stake in prairie thence N. 50 E. 62 Vrs. to stake in prairie thence S. 40 E. 2584 varas to forked tree marked "X" on West margin of the east Caranchua from which a life oak tree 24 inches in diameter marked "X" bears N. 76 30 W. 1 vara thence down said stream with its meanders to the place of beginning containing three hundred and twenty acres more or less.

Second Tract: Six hundred and forty acres originally granted to the heirs of Ebenezer Bean and described by field notes as follows: Beginning at a stake on the west margin of the east fork of the Caranchua from which a pin oak marked "X" 8 inches in diameter bears N. 58 E. 2 varas and another pin oak 8 inches in diameter marked "X" bears S. 58 W. 2 varas thence N. 40 W. 3592 varas to a stake in prairie. Thence S. 50 W. 940 varas to stake in prairie thence S. 40 E. 3942 varas to forked ash marked "A" from which a live oak 2 feet in diameter marked "H" bears N. 40 W. 12 varas thence up said stream with its meanders to place of beginning containing 640 acres of land more or less.

Third Tract:—Six hundred and fifty acres of land originally granted to the heirs of Ebenezer Bean and described by field notes as follows:—Beginning at a leaning double live oak tree marked "X" on the west margin of east Caranchua from which a pin oak
285 tree 18 inches in diameter marked "X" bears N. 18 W. 10 vrs. and a peach 4 inches in diameter marked "X" bears N

29.50 E. 12 varas thence N. 10 W. 3134 varas to stake in prairie, thence S. 50 W. 950 varas to stake and mound thence S. 10 E. 3044 varas to stake on W. margin of said stream from which a pin oak 8 inches in diameter marked "X" bears S. 50 W. 2 varas, thence up said stream with its meanders to place of beginning containing 640 acres of land more or less.

Interrogatory number two: How long have you been thus qualified?

Interrogatory number three: How much land do you own in the vicinity of this land?

Interrogatory number four: What portion of the above described sixteen hundred acre tract is what would be called good land and what portion is bad land? Explain this answer in detail.

Interrogatory number five: How do you distinguish between good land and bad land?

Interrogatory number six: Give an accurate description of this whole sixteen hundred acre tract.

Interrogatory number seven: What was a fair market value per acre of this whole tract on or about May 2nd, 1901? If this whole tract can be divided into different classes of land, please do so and then state a fair market value per acre of each separate tract on or about May 2nd, 1901.

Cross interrogatory number eight: What was a fair value per acre of this whole tract at forced sale or by sale under the hammer on or about May 2nd, 1901? If this whole tract can be divided into tracts of different classes of land, please do so, and then state the value per acre of each separate tract at forced sale or by sale under the hammer on or about May 2nd, 1901.

Interrogatory number nine: How have you arrived at the valuations given in answer to the foregoing interrogatories?

Interrogatory number ten: What was the condition of the real estate market on or about May 2nd, 1901, as to land of the nature of that about which you have testified?

Interrogatory number eleven: Do you know Mr. Joseph Gerst?

Interrogatory number twelve: State whether or not you ever had a conversation or conversations with Mr. Joseph Gerst regarding this land.

Interrogatory number thirteen: If so, state as best you can the times and places of each of these conversations and the persons present at each.

Interrogatory number fourteen: Do you remember the substance of the conversations? If any of them?

Interrogatory number fifteen: Give the substance of any or all of the conversations which you remember the substance.

Interrogatory number sixteen: How far is the Beaumont survey from the aforesaid sixteen hundred acre tract?

Interrogatory number seventeen: How large is the Beaumont survey?

Interrogatory number eighteen: Which is the better land, that in the sixteen hundred acre tract of land about which you have testified, or that in the Beaumont survey?

Interrogatory number nineteen: What transaction or transfer

with reference to the Beaumont ... ever took place during the ... part of the year 1901 or about that time? Give the consideration that passed in these transactions.

Interrogatory number twenty. Compare the condition of the ... estate market during the year 1901 for such land in small tracts with the market for the same year for such land in large tracts.

Interrogatory number twenty one. State any actual transaction as to land in the vicinity of that about which you have testified which will verify your estimates.

287 Interrogatory number twenty two. Has any change taken place or any improvements been made in the vicinity of the land since May 2nd, 1901, that has affected the value of the land about which you have testified?

Interrogatory number twenty three. What has been the effect of such improvement or change?

Interrogatory number twenty-four. What railroad or railroads have been constructed through or near this sixteen hundred acre tract of land since May 2nd, 1901? Give approximately the date of commencement of construction and date of commencement of operation of each railroad, what effect, if any, has this railroad (or these railroads) had on the value of this land?

Interrogatory number twenty five. How far was the nearest railroad from this sixteen hundred acre tract on May 2nd, 1901? the nearest railroad depot? How far is the nearest railroad from this sixteen hundred acre tract now? the nearest railroad depot now?

Interrogatory number twenty six. State any other fact that may be in your knowledge which will more fully explain the matters about which you have testified.

Respectfully submitted.

(Signed) McCOY, MOSS & KNOX,
Attorneys for Edward Schmidt.

Interrogatories to be Propounded to ... Deputy Clerk.

a. What official position, if any, ... you occupy in Matagorda County, Texas, during 1901?

b. What was the assessment of said sixteen hundred acre tract for the year 1901? Annex to your answer a certified copy of the assessment.

c. Was it the custom in Matagorda County, Texas, during 1901 to assess land at its market value?

288 *d.* What percentage of its market value was it the custom to assess land in Matagorda County, Texas, during 1901?

Respectfully submitted.

(Signed) McCOY, MOSS & KNOX,
Attorneys for Edward Schmidt.

15th Judicial District Court, State of Louisiana, Parish of Calcasieu.

No. 7525.

JAMES A. KENDALL, Trustee,
vs.
EDWARD SCHARFF et al.

Before proceeding to cross-examine the witness, plaintiff objects to interrogatory #2, for the reason that it is irrelevant and immaterial, the only question at issue being whether or not this was a bona fide transaction or one made to defraud the creditors of Chogoha Report, Bankrupt.

For the further reason that if defendant Scharff was a purchaser in good faith, the question as to the value of the land cannot affect the issue of this case, and if the sale was made as alleged, and for the purpose set forth in plaintiff's petition, the title to the property was never vested in the defendant, Scharff, and the value of the land could not in any manner affect the result flowing from such a transaction.

Plaintiff urges this as a general exception to all the interrogatories propounded to all the witnesses, viz., Edgar Bagley, J. E. Pierce, T. J. Poole, H. B. Vesper, L. C. Ward and Carl Fisk.

Plaintiff especially excepts to the following interrogatories as follows, to-wit: Nos. 3, 4, 5, 6, as being irrelevant and immaterial, and interrogatory #7 for the further reason that it is shown by the deed, which is the best evidence, that defendant Benoit paid $12,000.00 for the tract, of which $6,000.00 was paid in cash.

280 Same objection to interrogatories Nos. 8, 9, 10, 11, as to previous interrogatories, and the further and additional objection is urged to interrogatory #12 for the reason that plaintiff was not present at the alleged conversation, and that Joseph Guest is not a party to this suit, and any conversation he may have had, outside the presence of plaintiff, and with third persons, could not affect the issues involved in this case.

To interrogatories Nos. 13, 14, 15 the further and additional objection is urged for the reason that such conversations are inadmissible, irrelevant and immaterial to the issues involved in this case and unnecessarily encumbering the record.

Objects to interrogatories Nos. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, as being irrelevant and immaterial to the issues of this case.

With full reservation to the above exceptions and objections, and without in any manner waiving or abandoning same, plaintiff propounds the following cross-interrogatories:

Cross-interrogatory #1. How far is the hotel about which you have been testifying located from Blessing, Texas?

Cross-interrogatory #2. To be propounded to witness J. E. Pierce, at Blessing, Tex., and especially to witness J. E. Pierce, Blessing, Texas.

Please refer to exhibit marked "P-1" being a pamphlet entitled

185

"Blessing, Texas," and purporting to give a description of
290 "Blessing, Texas, and its environs, with a brief review of the past, and a prospectus of the future" and state whether or not the statements contained therein are correctly stated, and give approximately a correct description of the lands in Matagorda County, Texas.

Cross-interrogatory #3. Please state how far is the Pierce tract which has been subdivided and described on page marked A from the land which you have been testifying about.

Cross-interrogatory #4. Is it or not a fact, that land located or situated on creeks, are more desirable than those not similarly located or situated, and that the reason is, that the advantage of being located or situated on a creek, is better on account of irrigation and drainage, and as a watering place for stock.

Cross-interrogatory #5. Is is not a fact that water for irrigation and stock, and drainage is one of the first requisites of land in Matagorda Co., Texas?

L. A. GOUDEAU
Atty for Jas. A. Kinder, Trustee.

Filed April 22nd, 1910.
(Signed) EUGENE J. LEVEQUE
Dy Clerk

291 UNITED STATES OF AMERICA.
State of Louisiana.
Parish of Calcasieu:

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARLI et al.

Cause Pending in Fifteenth Judicial District Court

Be it known, that acting under and by virtue of the annexed commission, issued in the above entitled and numbered suit by the Fifteenth Judicial District Court of the Parish of Calcasieu, State of Louisiana, and the authority in me vested, I, W. C. Carpenter, a Notary Public in and for the County of Matagorda, State of Texas, did cause to personally come and appear before me on this the 30th day of April, A. D. 1910, at 1 o'clock P. M., J. E. Pierce, one of the witnesses named in the annexed commission and after having first duly sworn him, upon the Holy Evangelist, to tell the whole truth and to truthfully answer the annexed direct and cross interrogatories, I did, then and there propound to him the said interrogatories and cross interrogatories, to which he made answer as follows, to wit:

To the first interrogatory he answers and says:

My name is Jonathan E. Pierce, commonly known as J. E. Pierce. I was 70 years old on the 6th day of December, 1909. Blessing, Texas. Retired Stock Raiser.

To the second interrogatory he answers and says:

My familiarity with the location of this land, having known it for 19 years, during which time I have been frequently on it and around it, and with the value of surrounding lands during all this time. I have surveyed around this tract of land and located all the outer corners.

To the third interrogatory he answers and says:

202 I do not now own any land in the immediate vicinity of this land, but formerly owned land within a mile and a half of it.

To the fourth interrogatory he answers and says:

I would call about ⅓ of it good land and the rest of it bad land. I call one-third good land because it is fair arable prairie land; the other portion is low, wet, sandy land and covered with live oak runners; we formerly called it the ars-e-hole of Texas.

To the fifth interrogatory he answers and says:

By the quality of grass that grows upon it and color of the soil.

To the sixth interrogatory he answers and says:

This land lies on the west side of the East Caranchua Creek and that portion along the creek is pretty fair land, but back from the creek becomes sandy and low and covered with live oak runners and is not what you would call agricultural land.

To the seventh interrogatory he answers and says:

I would have considered $5 per acre a fair value for the good land at that time and not over $1.50 per acre for the other. As before stated there are two classes of this land, ⅓ of it fairly good land and the rest very poor land. Considerable portion of it is not worth anything.

To the eighth interrogatory he answers and says:

I am unable to say, but do not think it would have brought as much as I have stated it was worth.

To the ninth interrogatory he answers and says:

No way land was selling at about that time.

To the tenth interrogatory he answers and says:

About that time there was no demand for land in that section and there was no sale of any land in that vicinity that I know of.

To the eleventh interrogatory he answers and says:

203 I have a slight acquaintance with him.

To the twelfth interrogatory he answers and says:

None.

To the thirteenth interrogatory he answers and says:

This was answered in my answer to number twelve.

To the fourteenth interrogatory he answers and says:

This was answered in my answer to number 12.

To the fifteenth interrogatory he answers and says:

Having had no conversation with him there is nothing to remember.

To the sixteenth interrogatory he answers and says:

About 2½ miles.

To the seventeenth interrogatory he answers and says:

I've forgotten how many acres there are in the Beaumont.

To the eighteenth interrogatory he answers and says:

Am not prepared to say which is the better.

To the nineteenth interrogatory he answers and says:

Do not know.

To the twentieth interrogatory he answers and says:

There was more demand for large tracts than small ones at that time. A man hunting for a small tract of good land to settle upon might have paid more than he would have for a large tract.

To the twenty-first interrogatory he answers and says:

I know of no transaction in the immediate vicinity of this land about said time.

To the twenty-first interrogatory he answers and says:

Yes.

To the twenty-third interrogatory he answers and says:

It has doubled, trebled and, in some instances, quadrupled the value of the land.

To the twenty-fourth interrogatory he answers and says:

St. Louis, Brownsville & Mexican Railroad. I can't give the exact date, but I think about 4 years ago. As before stated, it has
294 doubled, trebled and quadrupled the value of the land in some instances.

To the twenty-fifth interrogatory he answers and says:

The nearest railroad and depot to this land in 1904 was about four and a half or five miles. The St. Louis, Brownsville and Mexican Railroad cross this tract and there is no depot nearer than Rivera, but there is a flag station at Francitas about 2 miles distant.

To the twenty-sixth interrogatory he answers and says:

The fact of having built the railroad through this territory has brought people into the country who are buying the lands at exorbitant prices and settling upon it.

Cross-interrogatories.

To the first cross interrogatory the witness answers and says:

About four and a half miles.

To the second cross interrogatory he answers and says:

I have examined the Exhibit "P" [illegible] and will say that the lands on the east side of the Tres Palacios river along Bruni Creek and [illegible] are [illegible] but the lands lying west of the creek are [illegible] and the description as applied to them is [illegible] The photographs of myself and Uncle Jimmy with [illegible] to life.

I was not the author of this pamphlet, but it was gotten up by a very enterprising land Agent, and withal, it contains a very great number of facts that are true.

To the third cross interrogatory he answers and says:

From three and a half to five miles.

To the fourth cross interrogatory he answers and says:

As a general proposition I would say yes.

To the fifth cross interrogatory he answers and says:

The character of the soil being equal I would consider
295 a tract bordering upon a water course from which water can be taken for irrigation, would be more value than another tract of same quality not located upon a water course.

(Signed) J. E. PIERCE.

All of which above answers were reduced by me to writing in his presence and were then read over to said witness who persisted therein and were then signed by said witness in my presence.

In faith whereof, I have hereunto set my hand and seal of office this 30th. day of April A. D. 1910.

(Signed) W. C. CARPENTER.
(SEAL.) *Notary Public, Matagorda County, Texas.*

Returned and filed May 2nd. 1910. Eugene J. Leveque, Dy Clerk.

Filed in evidence May 3rd. 1910, in Suit No. 7525 and marked "D-25." M. D. Andrus, Dy Clerk.

UNITED STATES OF AMERICA,

STATE OF TEXAS,
County of Matagorda:

THE STATE OF LOUISIANA,
Parish of Calcasieu:

Fifteenth Judicial District Court.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Be it known that acting under and by virtue of the annexed commission, issued in the above entitled and numbered suit by the Fifteenth Judicial District Court of the Parish of Calcasieu, State of Louisiana, and the authority in me vested, I, W. D. Wilson, a Notary Public, in and for the County of Matagorda, State of Texas, did cause to personally come and appear before me, on this
296 the 25th. day of April at the hour of Ten o'clock, A. M. EDGAR RUGELY, one of the witnesses named in the annexed commission, and after having first duly sworn him, according to law, to tell the whole truth and to truthfully answer the annexed interrogatories, and cross interrogatories. I did then propound to him the said Interrogatories and Cross Interrogatories to which he made answer as follows, to-wit:

To the first Interrogatory he answers and says:

Edgar P. Rugley, age 59 years, residence Bay City, Matagorda County, Texas.

To the Second Interrogatory he answers and says:

I was born and raised in Matagorda County, Texas, have lived here all my life with the exception of five years, when I lived in Bell County, and from the year 1902 to 1906 I was County Tax Assessor of the County of Matagorda, State of Texas, where this land is situated.

I have had a general idea of land values in this County since I was tax assessor.

To Interrogatory No. Three he answers and says:

None.

To Interrogatory No. Four he answers and says:

I do not know anything about the quality of this specific tract of land.

To the fifth Interrogatory he answers and says:

Not know anything about this special tract. I do not think it necessary for me to undertake to distinguish between good land and bad land.

To the Sixth Interrogatory he answers and says:

I cannot do this.

To the Seventh Interrogatory he answers and says:

I consider that lands in general in the vicinity of the tract of land inquired about, that is, land along the Caranchua in Matagorda County, Texas, were worth about five or six dollars per acre, on or about May 2nd, 1901. I do not know whether this tract can be divided into different classes of land or not. I can only testify
297 as to the general market value of lands in that vicinity.

To the Eighth Interrogatory he answers and says:

It is hard to tell, what this tract of land would have brought at forced sale, on or about May 2nd, 1901, as there was not very much demand for lands in that section at that time. I suppose it would have brought, Four, Five or Six Dollars per acre.

To the Ninth Interrogatory he answers and says:

I was County Tax Assessor, for four years and in that way became more or less familiar with land value in Matagorda, County, Texas.

To the Tenth Interrogatory he answers and says:

There was not much demand for land of the nature of that about which you have enquired.

To the Eleventh Interrogatory he answers and says:

No.

To the Twelfth Interrogatory he answers and says:

No.

To the Thirteenth, Fourteenth, and Fifteenth Interrogatories he answers and says:

I have never had any conversations with Joseph Gerst.

To the Sixteenth Interrogatory he answers and says:

I suppose about a mile. May be a little further and may be not so far.

To the Seventeenth Interrogatory he answers and says:

It is supposed to contain 640 acres.

To the Eighteenth Interrogatory he answers and says:

I do not know.

...the Nineteenth Interrogatory he answers and says:—
...do not know anything about this.
...the Twentieth Interrogatory he answers and says:—
...do not know. Small tracts generally bring a higher price per ...acre than larger tracts.
To the Twenty-first Interrogatory he answers and says:
I do not know.
...the Twenty-second Interrogatory he answers and says:
...the St. Louis, Brownsville & Mexico R. Railroad has been constructed from Houston to Brownsville running through Matagorda County near the coast which very materially increased land values ...along its line, and land is now on throughout all the Gulf ...Section, and lands are in greater demand than they ever have ...been to my recollection.
...the Twenty-third Interrogatory he answers and says:
...d values have increased very rapidly.
...the Twenty-fourth Interrogatory he answers and says:
...is question has already been answered, only so far as I am able ...swer it in my answer to previous interrogatories.
...the Twenty-fifth Interrogatory he answers and says:
...four or five miles to the best of my knowledge.
...ging was the nearest depot in 1901.
...do not know of my own knowledge. I understand that the ...P. & M. railroad runs through this tract. And I do not know ...that there is any depot now on account this tract that is Blessing.
...the Twenty-sixth Interrogatory he answers and says:
...have already testified to all I know about it.

...he witness, Edgar Bugeley, answers and says in answer to the ...interrogatories propounded to him orally as follows:
I am Tax Assessor of Matagorda County, Texas.
The W. Scott Survey of 320 acres was assessed in 1901 at ...per acre. The two E. Bone Surveys of 640 acres each were ...ed in 1901 at $3.00 per acre. Attached hereto and marked ...hibit "A" is a certified copy of the assessment made by the ...Tax Assessor of Matagorda County, Texas.
It was not.
From fifty to sixty per cent.
To the Interrogatory No. One he answers and says:
I have already answered this question to the direct inter...ories.

(Signed) EDGAR P. BUGELEY.

...of which above answers were reduced by me to writing in his ...ce and were then read over to said witness who persisted ...in and were then signed by said witness in my presence.
...timony whereof, I have hereunto set my hand and seal of office, ...the 25th day of April, A. D. 1910.

Signed W. D. WILSON,
(Seal.) *Notary Public in and for Matagorda County, Texas.*

"EXHIBIT A."

Abstract No. 120. Assessor's Abstract of Land for Matagorda Co., Texas.

Patent.						Certificate.	
No.	Vol.	To whom issued.	Date.	Acres.	No.	Class.	To whom issued.
4	93	Bean, E. heirs.	Oct. 28, 1845	640	3333	Bounty.	Blair, E.

Rendered for Taxation.

Year.	By whom rendered.	Acres.	Value
1903.	Unknown	640	1920
1904.	Unknown	640	1920
1905.	Unknown	640	1920
1906.	St. L. B. & M. Ry. Co.	7.30	...
"	Unrendered	632.70	1900
1907.	St. L. B. & M. Ry. Co.	7.30	...
"	Unrendered	632.70	3160

I hereby certify that the foregoing is a true and correct copy of the rendition for taxes of the above tract of land for said years as shown by page 121 Vol. 5, Abstract of Lands now in the Tax Assessor's office in Matagorda County, Texas.

Witness my hand this 30th day of April, 1910.

309 (Signed) J. H. SELKIRK,
Deputy Assessor.

Abstract No. 121. Assessor's Abstract of Land for Matagorda Co., Texas.

Patent.						Certificate.	
No.	Vol.	To whom issued.	Date.	Acres.	No.	Class.	To whom issued.
5	1	Bean, E. heirs.	Oct. 24, 1845	640	3334	Bounty.	Blair, E.

Rendered for Taxation.

Year.	By whom rendered.	Acres.	Value
1903.	Unknown	640	1920
1904.	Unknown	640	1920
1905.	"	640	1920
1906.	St. L. B. & M. Ry.	3.5	...
"	Unrendered	636.50	1913
1907.	St. L. B. & M. Ry. Co.	3.5	...
"	Unrendered	636.5	3180

I hereby certify that the foregoing is a true and correct copy of the rendition for taxes of the above tract of land for said years as

shown by page 121 Vol. 3, Abstract of Lands now in the Tax Assessor's office in Matagorda County, Texas.

Witness my hand this 30th day of April, 1910.

(Signed) J. H. SELKIRK,
Deputy Assessor.

Abstract No. 391. Assessor's Abstract of Land for Matagorda Co., Tex.

Patent.					Certificate.	
No.	Vol.	To whom issued.	Date.	Acres.	No.	Class.	To whom issued.
4	5	Scott, Andrew	May 20, 1846	320	6951	Bounty	Scott, Andrew.

Rendered for Taxation.

Year.	By whom rendered.	Acres.	Value.
1903.	Unrendered	320	1120
1904.	Unrendered	320	1120
1905.	Unrendered	320	1120
1906.	St. L. B. Ry. Co.	3.20	....
"	Unrendered	316.80	1095
1907	St. L. B. & M. Ry. Co	3.2	....
"	Unrendered	316.80	1095

301 I hereby certify that the foregoing is a true and correct copy of the rendition for taxes of the above tract of land for said years as shown by page 391 Vol. 3, Abstract of lands now in the Tax Assessor's office in Matagorda County, Texas.

Witness my hand this 30th day of April, 1910.

(Signed) J. H. SELKIRK,
Deputy Assessor.

Filed in Evidence May 23rd 1910 in suit No. 7525 and Marked "D 26." (Signed) Eugene J. Levesque, Dep. Clerk

UNITED STATES OF AMERICA,
State of Texas, County of Matagorda:

THE STATE OF LOUISIANA,
Parish of Calcasieu, Fifteenth Judicial District:

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHAEFF et al.

Be it known that acting under and by virtue of the annexed commission, issued in the above entitled and numbered suit by the Fifteenth Judicial District Court of the Parish of Calcasieu, State of Louisiana, and the authority in me vested, I, W. D. Wilson, a

Notary Public in and for the County of Matagorda, State of Texas, did cause to personally come and appear before me, on this the 29th day of April, at the hour of 9:30 o'clock, A. M. T. J. Poole, one of the witnesses named in the annexed commission, and after having first duly sworn, him according to law, to tell the whole truth, and to truthfully answer the annexed interrogatories and cross interrogatories, I did then propound to him the said Interrogatories and Cross Interrogatories, to which he made answer as follows, to-wit:

To the First Interrogatory he answers and says:

T. J. Poole; 49 years of age, Bay City, Matagorda County
302 Texas. Banker.

To the Second Interrogatory he answers and says:

I have resided in Matagorda County, since 1880 within ten miles of the tracts in question, and am more or less familiar with land sales and the value of land in that vicinity. I have also bought and sold lands in that section.

To the Third Interrogatory he answers and says:

None.

To the fourth Interrogatory he answers and says:

I have driven over this land numbers of time, and in a general way consider the Eastern portion of it the best.

To the Fifth Interrogatory he answers and says:

I consider well drained black lands better than sandy lands not so well drained.

To the Sixth Interrogatory he answers and says:

I cannot do this.

To the Seventh Interrogatory he answers and says:

In my opinion this land could have been sold at approximately $3.00 to $5.00 per acre in 1901. There was little demand for lands in that section at that time and it would have been a difficult matter to have found a buyer except at a very low price.

To the Eighth Interrogatory he answers and says:

I don't believe that under the hammer or at forced sale it would have brought over $2.50 per acre.

To the Ninth Interrogatory he answers and says:

From a general knowledge of the conditions prevailing in that section at that time.

To the Tenth Interrogatory he answers and says:

There was no ready market for lands in that section, as there had been practically no development at that time.

To the Eleventh Interrogatory he answers and says:

I did, very well.

303 To the Twelfth Interrogatory he answers and says:

I never did.

To the Thirteenth Interrogatory he answers and says:

As stated above I had no conversation with Gerst.

To the Fourteenth and Fifteenth Interrogatory he answers and says:

I had no conversations.

To the Sixteenth Interrogatory he answers and says:

About two miles.
To the Seventeenth Interrogatory he answers and says:
It is supposed to contain 640 acres.
To the Eighteenth Interrogatory he answers and says:
My opinion is that the lower land is best.
To the Nineteenth Interrogatory he answers and says:
I do not know.
To the Twentieth Interrogatory he answers and says:
I don't think there was much difference, because there was no demand for land at that time, although small tracts would naturally bring a better price.
To the Twenty-first Interrogatory he answers and says:
I couldn't of my own knowledge testify to any such transactions.
To the Twenty-second interrogatory he answers and says:
Yes.
To the Twenty-third Interrogatory he answers and says:
It has very greatly enhanced values.
To the twenty-fourth Interrogatory he answers and says:
The St. Louis Brownsville & Mexico. I don't remember, the date of the commencement of operation. Values have been enhanced.
To the Twenty-fifth Interrogatory he answers and says:
I should judge about 11½ miles. Nearest railroad depot about the same distance. The nearest railroad now traverses some part of this tract. From some portions of this land the nearest depot is now about two miles distant.
To the Twenty-Sixth Interrogatory he answers and says:
Owing to the rapid development of that portion of the County by actual settlers there has been a very marked increase and demand for such lands as we have been discussing. However prior to this development these lands had only grazing value, which really should not have been over Two to Three Dollars per acre.
To Cross Interrogatory No. One he answers and says:
About 11½ miles.
To cross Interrogatory No. Four he answers and says:
It is.
To Cross Interrogatory No. Five he answers and says:
It is.

(Signed) T. J. POOLE.

All of which above answers were reduced by me to writing in his presence and were then read over to said witness who persisted therein and were then signed by said witness in my presence.

In faith whereof I have hereunto set my hand and seal of office, this the 29th day of April, A. D. 1910.

(Signed) W. D. WILSON,
[SEAL] *Notary Public, Matagorda County, Texas.*

Returned and filed May 2nd, 1910. (Signed) Eugene J. Laveque, D'y Clerk.

Filed in Evidence May 3rd, 1910. In suit No. 7525 and marked "D. 26." (Signed) Eugene J. Leveque, D'y Clerk.

THE STATE OF LOUISIANA,
Parish of Calcasieu:

Fifteenth Judicial District Court.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

305 The State of Louisiana and said court to any duly quali
notary public in and for Wharton county, Texas:

Know ye, we reposing confidence in your prudence and fidel
do by these presents, give unto you authority diligently to
amine, Carl Fisk, in a certain suit now pending in said Court
which, James A. Kinder, Trustee, is plaintiff and Edward Sch
et al., are defendants, on the part of said def'ts. Therefore we de
you at certain times and places by you to be appointed for that p
pose, to cause the said witness to come before you, that you th
and then examine him upon his oath, first taken before you n
the Holy Evangelist; that you reduce the said examination to w
ing, and when you shall have so taken the same send it closed
and under seal to us, in our said Court, at the Court house in t
of Lake Charles, Calcasieu Parish, La., on or before May 3rd, 1
and have you then and there this commission.

Witness the Honorable Wm. F. Schwing, Judge ad hoc of s
Court, this 22nd day of April, 1910.

[SEAL.] (Signed) EUGENE J. LEVEQUE,
Deputy Clerk

Suit Pending in the 15th Judicial Dist. Court, Parish of Calcas
State of Louisiana.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Answers and depositions of Carl Fisk, a residen of the County
Wharton, in the Satte of Texas, to the accompanying Direct
terrogatories propounded to him in the above-entitled cause, ta
before E. G. Brooks, a notary public in and for Wharton Cou
Texas, in accordance with the accompanying commission:

306 Answers of the witness CARL FISK:

To the first Interrogatory he answers: My name is Carl Fisk,
age is 53; my residence is El Campo, Wharton County, Texas.
my occupation is Land agent.

To the second interrogatory witness answers: My qualification

a witness on the value of this land are that I have been a land agent in Texas for the *past* 17 years, and known about this particular tract as I was instrumental in selling same for Mr. Gerst.

To the second interrogatory (6) witness answers: About 17 years in Texas.

To the third Interrogatory witness answers: I do not now own any land in this immediate vicinity.

To the fourth interrogatory witness answers: Between four and five hundred acres would be called good land; the balance is not worth very much.

To the fifth Interrogatory witness answers: By the quality of the same.

To the sixth Interrogatory witness answers: Describing this tract as to the quality I would state that there is between four and five hundred acres of it good land and between two and three hundred acres of it timber land, that is not quite as good, and the balance is land that is spotted with white alkali spots, which kind is almost worthless in our State.

To the seventh Interrogatory witness answers: In my estimation the fair market value per acre of the entire tract would be about $3.00 per acre on May 2nd 1901. Between four and five hundred acres would be worth about $5.00 per acre; the timber land would be worth about $2.00 per acre; the balance of it would be almost worthless. My opinion of its value on the aforesaid date.

To the eighth (cross) Interrogatory witness answers: Under forced sale I would think that the whole tract would bring about 307 — $2.50 per acre. Divided as in the seventh Interrogatory I would judge that the four or five hundred acres would probably bring $4.00 per acre; the timber land about $1.50 per acre; the remaining hardly anything.

To the ninth Interrogatory witness answers: By being familiar with the different classes of land in this State.

To the tenth Interrogatory witness answers: The condition of the Real estate market as to this class of land was very low at this time named, account of bad crops and low prices of same.

To the Eleventh Interrogatory witness answers: I do.

To the twelfth Interrogatory witness answers: I have.

To the thirteenth Interrogatory witness answers: It was in Dec., 1903, that I had one conversation with him, and the other was in January, 1901. I do not know who was present at these times.

To the fourteenth Interrogatory witness answers: The conversations were in regards to four vendor's lien notes, each of $1,500.00 that Mr. Gerst asked me if I would buy, which notes were liens against the aforementioned land. I did not consider the same a good investment and good security at the time, and Mr. Gerst told me that he would have to foreclose on said notes against said land.

To the fifteenth Interrogatory witness answers: I have answered this in the previous Interrogatory.

To the sixteenth Interrogatory witness answers: About two miles.

To the seventeenth Interrogatory witness answers: 640 acres about.

To the eighteenth Interrogatory witness answers: The Beaumont survey is the best land.

To the Nineteenth Interrogatory witness answers: I do not
308 know.

To the twentieth Interrogatory witness answers: The Real Estate market on small tracts would have been a little higher.

To the twenty-first Interrogatory witness answers: I cannot correctly state any.

To the twenty-second Interrogatory he answers: Yes, sir.

To the twenty-third Interrogatory he answers: A railroad has been built across the said tract of land since then and has enhanced the value of it.

To the twenty-fourth Interrogatory witness answers: The St. Louis, Brownsville & Mexican Railroad. I do not exactly remember when commenced constructions and operation. Enhanced the value of said land.

To the Twenty-fifth Interrogatory Witness answers: About four or five miles. I think 5 miles the nearest railroad depot. This was in May, 1901. The railroad runs across a portion of it now. I don't think the nearest railroad depot is over a mile from there now.

To the twenty-sixth Interrogatory witness answers: Nothing else which I wish to testify to.

To the first cross-interrogatory witness answers. About five miles.

To the third cross-interrogatory witness answers: I do not know.

To the fourth cross-interrogatory witness answers: Generally speaking it is, but in this particular instance it was not because in this creek there was not enough water for irrigation, and the banks were so steep that the stock could not get to the water to drink, and they had to use wind-mills on the land for the stock, and in many instances the stockmen had to ride up and down this creek and pull out cattle who had tried to drink there and had fallen in. Therefore they used the wind-mill on this land for watering stock.

309 To the fifth cross-interrogatory witness answers. It is.

(Signed) CARL FISK, *Witness.*

THE STATE OF TEXAS,
County of Wharton:

I, E. G. Brooks, Notary Public in and for Wharton County, Texas, do hereby certify that on this day the foregoing answers of Carl Fisk the witness, whose signature appears above, were sworn before me and that upon the appearance of the said witness he was by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, and was carefully examined, and his answers to the direct and cross interrogatories attached hereto were taken by me. That the testimony of said witness was reduced to writing by me, and by no other person, and was then subscribed and sworn to by said witness before me.

In testimony whereof I have hereunto set my hand and seal at Wharton, Texas, on this the 26th day of April, 1900.

[SEAL.] (Signed) E. G. BROOKS.
Notary Public, Wharton County, Texas.

Filed in evidence May 3rd, 1910. In Suit No. 7525 and marked "D-27" M. D. Andrus, D'y Clerk.

THE STATE OF LOUISIANA,
Parish of Calcasieu:

Fifteenth Judicial District Court.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

The State of Louisiana and said court to any duly qualified notary public in and for Jackson County, Texas:

Know ye, That we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine L. E. Ward, in a certain suit now pending in said 210 Court in which James A. Kinder, Trustee, is Plaintiff and Edward Scharff et al., are defendants, on the part of said Defendants. Therefore we desire you at certain times and places by you to be appointed for that purpose, to cause the said witness to come before you, that you there and then examine him upon his oath first taken before you upon the Holy Evangelist; that you reduce the said examination to writing, and when you shall have so taken the same send it closed up and under seal to us, in our said Court, at the Court house in town of Lake Charles, Calcasieu Parish, La., on or before May 3rd, 1910, and have you then and there this commission.

Witness the Honorable William F. Schwing, Judge ad hoc of said Court, this 22" day of April, 1910.

[SEAL.] (Signed) EUGENE J. LEVEQUE.
Deputy Clerk.

Suit Pending in the Fifteenth Judicial District Court of the Parish of Calcasieu of the State of Louisiana.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Answers and depositions of L. E. Ward, a resident citizen of Edna, Jackson County, Texas, to the accompanying interrogatories propounded to him in the above entitled and numbered cause, taken before John O. Rowlett, a notary public in and for Jackson County, Texas, in accordance with the accompanying commission.

Answer of witness L. E. WARD:

To the first interrogatory he answers: My name is L. E. Ward, age sixty one (61), and I am at present farming. I am a resident of Edna, Jackson County, Texas, was born, raised in, and have always lived in Jackson County, Texas.

To Interrogatory No. 2 he answers: I lived and handled [illegible] stock in that section for many years, and had my attention directed to these lands by the reason that they at one time adjoined my lands, and belonged then to Henry Hendley. I afterwards sold my lands and cattle to my brother L. Ward, again, and after selling to my brother, was in the real estate business, and had these lands for sale, and together with other concerns had the sale from Gerst to Benoit. I believe that is the way the name is spelled. We concluding agents with men sold the lands in this way. I contracted the sale at $7.50 per acre, Gerst refused to make a deed at that price, as he was getting only $5.00 per acre and I had to take a deed from Gerst at $5.00 and then make the deed to Benoit, at $7.50 per acre, and Gerst paid me a commission out of the $5.00.

To interrogatory No. 3, he answers: None at present.

To interrogatory No. 4, he answers: There is about 100 or 500 acres of it that is good black or hog wallow land, that balance is what I consider poor sandy land, some brush and timber, and some having alkali spots on it and ponds or low flat and wet places.

To interrogatory No. 5 he answers: By the soil and the character of vegetation that grows on it.

To the interrogatory No. 6 he answers: See above answers, or get a map of Jackson and Matagorda Counties.

To Interrogatory No. 7 he answers: When Gerst sold this land, and I had made the deed already mentioned, I had the party pay $1,000.00 in cash, believing that I could make the land bring me the other $1,000.00 if I had to pay Gerst the balance, and I do not consider that any real advance in value was made on these lands up to May, 1904; Taken as a whole, I do not believe that this land could have been subdivided and all sold so as to fetch a greater amount.

To "Cross Interrogatory No. 8," he answers: I do not believe that the entire lands would have brought over $1,000.00 and
312 Gerst at one time was threatening to foreclose, and being a warrantor, I was making arrangements to see that they brought this amount, and I telephoned Mr. E. Scharff, about Gerst's actions, demands and threats, in this way trying to protect myself from being looser in case of a forced sale. The boll weevil was ravaging this County about that time and I have doubts if the lands could have been subdivided and sold so as to fetch a greater amount.

To interrogatory No. 9 he answers: I had sold some of my brother's (L. Ward) land, within about two miles of this, and that was as good as the best of this—at $6.00 per acre (or about that price) and some of the parties sold to after paying part cash abandoned the land and it went back to my brother.

To Interrogatory No. 10 he answers: The most of this land is timber and brush, and there was very little demand for land of that class at that time.

To interrogatory No. 11 he answers: I knew him during his lifetime.

To interrogatory No. 12 he answers: Yes, and it is Joseph Gerst, that is meant, whenever "Gerst," is mentioned herein.

To Interrogatory No. 13, he answers: On two or three occasions Gerst spoke to me here in Edna, about this land deal, and I do not believe that any one else was present on either of these occasions, but it is possible that I may not remember correctly on that point.

To Interrogatory No. 14, he answers: I remember that he spoke of this land, and notified me as he had made the deed to me, and he threatened foreclosing on the land. After Gerst found out the consideration in my deed to other party (Benoit) was $7.50 per acre he thought for a while of backing out of the sale, but after it was all over, he was glad that he let the land go.

To interrogatory No. 15, he answers: I have just given that in answer to interrogatory No. 14.

313 To interrogatory No. 16, he answers: About two or three miles.

To interrogatory No. 17, he answers: Supposed to be 640 acres, I do not know absolutely the acreage.

To Interrogatory No. 18, he answers: Take each tract as a whole, I consider the Beaumont, the most valuable. The Garanchan Creek runs through the Beaumont, and the largest part of it is prairie.

To Interrogatory No. 19, he answers: Nothing of my own knowledge.

To interrogatory No. 20, he answers: The smaller tracts were generally held at proportionately higher prices than the large tracts.

To interrogatory No. 21, he answers: I do not recall any land being sold in that immediate section at that time, shortly before I sold as before stated some of the lands belonging to my brother, and it was deeded about the time mentioned, and he had to take it back for the balance due on it, or it was about that time or a little later. I know that my brother L. Ward, bought 300 acres out of the John

Powers league, lying near this land, last year, and that he paid $5 00 per acre for it, or $1500.00 for the three hundred acres.

To Interrogatory No. 22, he answers: Yes; the St. Louis Brownsville & Mexico Railroad has been built, passing through this land, and besides this, J. E. Pierce, has cut up and sold a number of small tracts, in this section, and my brother I. Ward has sold a large body of land near here also, which is also being cut up into small tracts, and all of this is being advertised, and naturally causes an interest in, and raise of prices of these lands.

To Interrogatory No. 23, he answers: Prices have gone up, but I don't think that the values have increased accordingly.

To Interrogatory No. 24, he answers: As before stated
311 the St. Louis Brownsville & Mexico Railroad has been built.

I do not know when this road was built, but they were getting the right of way through here in June or July, 1904. The road would naturally enhance the value of all lands through which it passed and in that immediate vicinity.

To Interrogatory No. 25 he answers: About four miles. About four miles. The St. Louis, Brownsville & Mexico R. R. runs across this land, and the nearest Railroad depot is about One and one half miles.

To Interrogatory No 26, he answers: I do not recall any fact at present that is material, and not given in the above, I would state however that when I said Gerst, I meant to be understood as not one of the name of Gerst associated in any way with this transaction.

Answers to Cross-interrogatories by I. Ward Witness.

To Cross Interrogatory No. one he answers: about four miles.

(Signed) I. E. WARD, *Witness.*

Sworn to and subscribed before me this April 25th A. D. 1910.

(Signed) JOHN O. ROWLETT.

[SEAL.] *Notary Public, of Jackson County, Texas.*

THE STATE OF TEXAS,
County of Jackson:

I, John O. Rowlett, a Notary Public, in and for Jackson County, Texas, do hereby certify that the foregoing answers of I. E. Ward, the witness before named, were made reduced to writing and read over to witness in the due order of such interrogatories and are then signed and sworn to by the witness before me.

Given under my hand and seal of office this the 25th day of April, A. D. 1910.

(Signed) JOHN O. ROWLETT,

[SEAL.] *Notary Public in and for Jackson County, Texas.*

315 Filed April 27th 1910.

[SEAL.] EUGENE J. LEVEQUE, *Dy Clerk.*

Filed in evidence May 3rd 1910. In suit No. 7525 and marked "D-28". M. D. Andrus, Dy. Clerk.

UNITED STATES OF AMERICA.

STATE OF TEXAS.
County of Matagorda:

STATE OF LOUISIANA.
Parish of Calcasieu:

Fifteenth Judicial District Court.

No. 7525.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Be it known that acting under and by virtue of the annexed Commission issued in the above numbered and entitled suit, by the Fifteenth Judicial District Court, of the Parish of Calcasieu, State of Louisiana and the authority in me vested, I, W. D. Wilson, a Notary Public in and for the County of Matagorda, State of Texas, did cause to personally come and appear before me, on this the 3rd. day of May A. D. 1910, at the hour of Three o'clock P. M., D. P. Moore, one of the witnesses named in the annexed commission and after having first duly sworn him according to law, to tell the whole truth and to truthfully answer the annexed interrogatories and Cross-Interrogatories. I did then propound to him the Interrogatories and Cross-Interrogatories, to which he made answer as follows, to-wit:

To the First Interrogatory he answers and says:—
D. P. Moore, age 58 years. Residence, Bay City, Matagorda County, Texas; occupation, merchant.
To the Second Interrogatory he answers and says:—
None.
To the Third Interrogatory he answers and says:—
None now.
To the Fourth Interrogatory he answers and says:—
I don't know anything about this 1600 acres tract.
To the Fifth Interrogatory he answers and says:—
It is owing to the general conditions. I consider black land well drained better than sandy land not drained.
To the Sixth Interrogatory he answers and says:—
Can't do this.
To the Seventh Interrogatory he answers and says:—
I don't know anything about this tract of land.
To the Eighth Interrogatory he answers and says:—
I don't know.
To the Ninth Interrogatory he answers and says:—
I have not valued the 1600 — tract of land.
To the Tenth Interrogatory he answers and says:—
There was very little demand for it.
To the Eleventh Interrogatory he answers and says:—
I do not.

To the Twelfth Interrogatory he answers and says:—
I never did.
To the Thirteenth Interrogatory he answers and says:
Had no conversation with him.
To the Fourteenth Interrogatory he answers and says:—
Had no conversations.
To the Fifteenth Interrogatory he answers and says:—
Had no conversations.
To the Sixteenth Interrogatory he answers and says:
I judge from the County map that it is about two miles. However I do not know the actual distance.
To the Seventeenth Interrogatory he answers and says:
It is a section—640 acres.
To the Eighteenth Interrogatory he answers and says:
I do not know.

To the Nineteenth Interrogatory he answers and says:

317 G. M. Magill and myself purchased the Beaumont Survey of 640 acres about the 27th day of January, 1904, from R. V. Davidson and wife of Galveston County, Texas, and F. D. Moore for the consideration of $3200.00.
To the Twentieth Interrogatory he answers and says:
Large tracts were sold at a great deal less than small tracts at that time.
To the Twenty first Interrogatory he answers and says:
I do not know of any.
To the Twenty-second Interrogatory he answers and says:
The chief cause of development was the building of the Brownsville Railway. Later the discovery of oil at Hardy oil field near there has also increased value. And that section is being divided and settled.
To the Twenty-third Interrogatory he answers and says:
Land values have been enhanced.
To the Twenty-fourth Interrogatory he answers and says:
The St. Louis Brownsville & Mexico Railway has been constructed. I don't know the date of construction.
To the Twenty-fifth Interrogatory he answers and says:
I don't know.
To the Twenty-sixth Interrogatory he answers and says:
I have testified to all that I know.
To Cross-Interrogatory No. One he answers and says:
I presume the Beaumont survey is about six miles from Blessing.

(Signed) D. P. MOORE.

All of which above answers were reduced by me to writing in his presence, and were then read over to said witness who testified therein, and were then signed by said witness in my presence.

In faith whereof I have hereunto set my hand and seal of office, this the 3rd day of May, A. D. 1910.

318 (Signed) W. D. WILSON,
[SEAL.] *Notary Public in and for Matagorda County, Texas.*

My commission expires June 1st., 1911.

Returned and Filed May 5th 1910. M. D. Andrus, Dy. Clerk.
Filed In evidence 5-5 1910. In Suit No. 7525 and marked "D-35".
Eugene J. Leveque, Dy. Clerk.

LA WARD, TEXAS, *June 17th*, 1909.

Mr. E. Scharff, Welsh, La.

DEAR SIR: I rec'd your letter in which you told me to make price and terms on your land in Matagorda Co., But as I know how so many people are about land I rather hated to make you an offer. As I cannot pay what a farmer would, to run stock on. I believe though as you won't price it, that I will offer you $8,000 *dollars* per acre for it. ¼ cash balance on or before 5 years at 7% interest.

Kindly let me hear from you and oblige.

Yours truly,
(Signed) L. WARD.

P. S. I want to say that I could have bought the Branch Bros. about 22 acres and well improved for $10.00 per acre and would not look it. It adjoins me on the west.

Yours truly,
(Signed) L. WARD.

Filed in evidence May 4th 1910 in Suit No. 7525 and marked "D-35". M. D. Andrus, Dy. Clerk.

STATE of LOUISIANA.
Parish of Calcasieu.

Office of Clerk, 15th Jud. Dist. of La.

I hereby certify that the within and foregoing 306 pages, 3 to 309 inclusive, contain a true and correct transcript of all pleadings filed, documentary evidence introduced, minutes of District Court and all proceedings had in suit entitled James A. Kinder, Trustee, Plaintiff, Versus, Edward Scharff et al, Defendants, bearing Number 7525 on the Civil Docket of said styled Court, with the exception of all pleadings, proceedings, etc., contained in transcript on Exception to Jurisdiction, on file in the Supreme Court, State of Louisiana, numbered 17,791 on the Docket of said Court. Said transcript together with the transcript herein contained, makes a full and complete transcript in the above numbered and entitled cause.

In testimony whereof, I herewith set my hand and affix my seal of office at Lake Charles, La., on this 2nd day of June, A. D. 1910.

(Signed) EUGENE J. LEVEQUE.
[SEAL] *Deputy Clerk of Court.*

320 *Proceedings Had in the Supreme Court of the State of Louisiana.*

Transcript of Appeal Filed.

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Appeal from the 15th Judicial District Court, Parish of Calcasieu.

Filed June 6th, 1911.
(Signed) PAUL E. MORTIMER, *Clerk.*

Continued to April 13th, 1911. (Extract from Minutes.)

NEW ORLEANS, *Wednesday, April 12th*, 1911.

The Court was duly opened, pursuant to adjournment. Present: their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

This case was ordered by the Court to be continued until tomorrow, Thursday, the 13th day of April, 1911.

Continued to April 15th. (Extract from Minutes.)

NEW ORLEANS, *Thursday, April 13th*, 1911.

The Court was duly opened, pursuant to adjournment. Present: their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

321 This case was ordered by the Court to be continued until Saturday, April 15th instant.

Continued with Preference. (Extract from Minutes.)

NEW ORLEANS, *Saturday, April 15th*, 1911.

The Court was duly opened, pursuant to adjournment. Present, their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

This case was ordered by the Court to be continued with preference.

Continued to May 10th, 1911. (Extract from Minutes.)

NEW ORLEANS, *Tuesday, May 9th*, 1911.

The Court was duly opened, pursuant to adjournment. Present: their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

This case was ordered by the Court to be continued until tomorrow, Wednesday, the 10th day of May instant.

Continued to May 11th, 1911. (Extract from Minutes.)

NEW ORLEANS, *Wednesday, May 10th*, 1911.

The Court was duly opened, pursuant to adjournment. Present: their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

This case was ordered to be continued until tomorrow, Thursday, the 11th day of May instant.

Called and Appearance. Argued and Submitted. (Extract from Minutes.)

NEW ORLEANS, *Thursday, May 11th*, 1911.

The Court was duly opened, pursuant to adjournment. Present: their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Somerville, Associate Justices.

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

This cause came on this day to be heard and was argued by counsel. Mr. L. A. Goudeau opened for the plaintiff, appellee; Mr. C. A. McCoy replied for the defendant, appellant; and Mr. Goudeau closed the argument. The court then took the cause under advisement upon the briefs and papers now on file.

Certified Copy of Testimony of Edward Scharff as to Value of Land.

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Extract from the Testimony of Edward Scharff, taken in Succession of Esther Scharff, No. 1867 on the Probate Docket of the Eleventh Judicial District Court, for the Parish of Calcasieu, State of Louisiana, on the 18th day of November, 1909.

323 "Q. Have you invested any funds in Texas, since you were married?

A. I did.

Q. In what way?

A. I purchased some land over in Texas.

Q. In what counties?

A. I purchased 1600 acres in Matagorda County. 160 I now own in Waller county, and Harris County.

Q. You still own that land?

A. Yes, sir.

Q. The tract of land in Matagorda County, what is the market value of it; what could you sell it for?

A. For $8.50 an acre. That is the only bona-fide offer I have had on it, since I have had it on the market. It might be worth more, but I have never gotten a bidder over that."

TATE OF LOUISIANA.
Parish of Calcasieu:

Clerk's Office, 15th Judl District Court.

I hereby certify, That the within and foregoing is a true and rect copy of a part, or an extract from the Testimony of Edward harff, taken in the matter of Succession of Esther Scharff, on the th day of November, 1909.

In testimony whereof, witness my official signature and seal of ce, at Lake Charles, Louisiana, this 29th day of May, A. D. 1911.

(Signed) EUGENE L. LEVEQUE.
[SEAL.] *Deputy Clerk Court.*

(Endorsed:) No. 18330 Jas. A. Kinder Trustee vs. Edward harff et al. Certified copy of testimony of Edward Scharff, as to value of the Land at issue in this case. Supreme Court of isiana. Filed May 30, 1911. (Signed) Paul E. Mortimer, rk.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, THURSDAY, *June 15th*, 1911.

The Court was duly opened, pursuant to adjournment. Present Hon. Joseph A. Breaux, Chief Justice, and Frank A. Monier Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Provosty, pronounced the opinion and ment of the Court in the following case:

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF, et al.

The judgment appealed from is set aside and the suit is dismissed plaintiff's costs.

Opinion of the Court.

NEW ORLEANS, THURSDAY, *June 15th*, 1911.

The Court was duly opened pursuant to adjournment. Present Hon. Joseph A. Breaux, Chief Justice, and Frank A. Monier Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Provosty, pronounced the opinion and ment of the Court in the following case:

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Appeal from the 15th Judicial District Court, Parish of Calcasieu
W. F. Schwing, Judge.

This suit is brought by the trustee in bankruptcy of Cleophas B[illegible]
noit to set aside, as null, under para. 67e of the Bankruptcy Act o[illegible]
1898, a sale of land made by the bankrupt to the defendant Schar[illegible]
within four months prior to the filing of the petition in bank-
325 ruptcy. The Estate had been closed, but was reopened, and
the same trustee was re-appointed for the purpose of bringing
this suit. The only defence that need be examined is that of pre-
scription.

Sec. 11, para. *d*, of the Bankruptcy Act, reads as follows:

"Suits shall not be brought by or against a trustee of a bankrupt
estate subsequent to two years after the estate has been closed."

Section 2 of said act, subhead 8, provides:

"Close the estates, whenever it appears that they have been fully
administered, by approving the final accounts and discharging the
trustees."

In this case the estate was "closed" on June 28, 1905, and the
present suit was filed on January 7, 1909. The prescriptive period
of two years had therefore elapsed before the suit was filed.

The learned counsel for plaintiff argues that in the present case
the estate "had not been fully administered," since the property now
being sued for had not been included in the administration.

The answer to this is twofold: first, that, while the property now
being sued for may have been recoverable for the creditors of the
bankrupt estate, on the ground that the sale of it had been made in
fraud of their rights, it did not belong to the said estate, was not
the property of said estate, so long as the sale had not been set
aside; for the said sale was not a pure simulation, but was real and
translative of ownership, albeit, perhaps, fraudulent and subject to
at the suit of the creditors, or of the trustee in bankruptcy, the
legal representative; and, secondly, the above quoted provision of
the bankruptcy act provides how estates shall be closed. "Close the
estates it says, 'by approving the final accounts and discharging the
trustees.'" And that is what was done in the present case;
326 the final account was approved, all the funds were distributed,
and the trustee was discharged. The estate, therefore, was
closed within the meaning of the above prescriptive provision.

If this prescription could apply only in cases where all the prop-
erty fraudulently disposed of by the bankrupt, and therefore re-
coverable for the estate, had been fully administered it could apply
in no case, and could have no operation, for it is only in cases where
property has thus been disposed of and is thus recoverable that

does have operation. Naturally it can have no operation in cases where the bankrupt has duly surrendered all his property and there is none to be sued for.

It is next contended by plaintiff that the prescription runs only from the date of the discovery of the fraud, and that in the present case the fraud was discovered only about a month before the filing of the suit.

The evidence goes to show that during the pendency of the bankruptcy proceedings the trustee had, or might readily have had, all the evidence he has produced in this case, save, perhaps, the positive and direct testimony of the bankrupt Benoit to the fraud. The plaintiff trustee testified as follows:

"Q. Did you cause him (referring to Judge Overton his attorney) to make any investigation relative to the disposition of this land which Benoit had made in Texas?

A. We made an investigation. We could not get anything at this end of the route, only a little surmise that such a thing had been done. We could get nothing definite, and it was late in the proceedings. * * * I told my attorney what I had heard and he started an investigation, which he continued for some time. * * * and he spent some money, I don't remember how much, probably $25 or $30, and finally he reported to me that the investigation did not amount to anything, that he could not get anything tangible. * * *

Q. Mr. Kinder, what is it you heard about his selling land in Texas that caused you to make that investigation?

327 A. Somebody. I don't remember who it was, asked me if Benoit had turned in that land that he had in Texas. I don't remember who it was, and I examined the schedule and I saw there was nothing in reference to lands in Texas. Whoever it was told me what county it was in, and we started without any information in regard to it, and I turned the matter over to my attorney, and he made the investigation and advised me that it wasn't worth while to.

"Q. Did you ask Mr. Benoit anything about it?

"A. No; I never asked Mr. Benoit anything about it that I remember of.

"Q. After you found out it was sold to Mr. Scharff, did you ask him about it?

"A. No, sir.

"Q. You were acquainted with Mr. Scharff?

"A. Yes, sir.

"Q. Did you ever ask Mr. Martin, the notary before whom the deed was passed?

"A. I never found out who passed the deed. I never was able to ascertain anything at this end of the line; everything was shut out.

"Q. Mr. Kinder, was there anything in the Benoit bankruptcy which aroused your suspicion at all that there had been fraud committed?

"A. Nothing except that land.

"Q. You say that land—you mean the Texas land?

"A. I mean the Texas land—well, there was some other things, too I will say that there were other things we inquired into; there was a sale of some stock down there and we had a hearing or two before Judge Taylor in regard to stock that Mr. Benoit had sold, and we had one or two hearings before the referee, and the investigation proved that Mr. Benoit had sold the stock for his son.

"Q. So, then, if I understand you correctly, at that time you had a suspicion in your mind that something of a fraudulent nature regarding the sale of this Texas land?

"A. All I could get was a little hint of this thing. I could
328 not find a man in Welsh who would tell me anything about it.

"Q. Mr. Kinder, you never had Mr. Scharff, nor Mr. Martin, nor Mr. Welsh, nor Mr. Benoit, summoned before the referee in bankruptcy and asked them about this fund prior to the time when you were discharged as trustee in the original appointment?

"A. I did not know that Mr. Martin or Mr. Welsh knew anything about it?

"Q. Did you have either one of these that I have named summoned before the referee and interrogate them?

"A. No, sir; not at that time for this reason: that it seemed like one big community, and they were all friends, and would not tell anything about it. I don't remember the individuals who they were, but I questioned parties around Welsh, and they would give me some evasive answer and walk off. I turned the matter over to my attorney, and we kept it up until he said it was useless to spend any more money on an uncertainty. He said there might be an equity in it for the creditors, and there might not. He said it was not worth while to spend any more money.

"Q. When was it that you first ascertained positively that this sale had been made, as alleged by you in your petition?

"A. * * * Yes; positively, since the case was reopened."

Mr. Winston Overton, now Judge, was the attorney for the trustee. He wrote to lawyers in Texas, where the land in question is situated, concerning the status of the land, and in due course received letters in reply.

"Q. Judge, after receiving these letters what did you do?

"A. I considered the matter and under all circumstances that were before me at the time, I felt that there would be no equity in the event we instituted suit and succeeded with the suit, that is to say, no equity in the land after the sale at forced sale for the creditors. Then I took the letters and went over to General Taylor's office. He was then referee in bankruptcy and I made a
329 verbal report to him and filed these with it as a part of my report and took no further steps in the matter."

"Q. Explain why there would be no equity if the land was sold at forced sale?"

"A. In favor of the creditors?"

"Q. Yes, sir."

"A. That was simply my conclusion; in other words, I was at that time under the impression or belief that lands were deteriorating in value, and if I mistake not it was on account of the crop conditions."

By the Court:

"Q. On account of what?"

"A. Crop conditions. Furthermore I knew that there or felt there were two mortgages on the land which I believed to be good mortgages, and I thought that after the expenses of the litigation were paid and after the land was sold at forced sale and the mortgage indebtedness paid, which I thought to be a valid indebtedness, that there would be little or nothing for the creditors; in other words, it was scarcely worth while to make the attack. I got no further than that."

"I made an investigation to learn if there was or was not fraud in the transaction. I felt that it was susceptible of attack, and I felt this largely because Mr. Benoit and Mr. Scharff resided in the parish of Calcasieu and the land was situated in Texas, and the consideration seemed to be large and I doubted whether or not Mr. Scharff would buy land costing as much as that seemed to cost, situated in the state of Texas, and especially as I did not know at that time or before that Mr. Scharff was a man of considerable means, though I knew he was a man of ordinary means, or at least believed so. In other words, I thought he would keep his money over here instead of going to Texas with it under the circumstances. I gave my impressions to Gen. Taylor, then referee having charge of the Benoit bankruptcy, and while I thought probably the sale was susceptible to attack because of the surrounding circumstances, yet I did not see as if the creditors were gaining anything by it even should we succeed in setting it aside."

* * * * * * *

"No, sir, I did not have sufficient evidence to set aside at that time. In other words, if this mortgage had not existed on the land I would have asked the trustee to make investigations and find out whether or not the evidence could be had upon which suspicions could be verified, or in other words, proved to be correct and well founded."

It appears from the foregoing that, during the pendency of the bankruptcy proceedings, the plaintiff suspected the fraud now sought to be relied upon and that if the enquiries concerning same were not prosecuted further it was simply because, owing to the mortgages upon the property, the doing so was not supposed to be worth while. Not only the suspicions of the plaintiff were fully aroused, and not only plaintiff was possessed of all the facts referred to above, but plaintiff had the right to summon the bankrupt before the referee and submit him to an examination under oath concerning his affairs. Had this been done, the bankrupt would have had either to perjure himself or make then and there the statements which he has made in the present case, upon which the plaintiff is

relying in the present case for showing the fraudulent character of the transaction. The court cannot gratuitously assume that the bankrupt would have perjured himself. But whether he would have done so or not, is really immaterial, since a litigant who has voluntarily abstained from availing himself of the means put in his hands by the law itself for the ascertainment of a suspected fact, cannot be allowed to plead his ignorance of such fact for arresting the course of the statute of prescription and repose. The law upon that point is fully settled.

331 In Wood vs. Carpenter, 101 U. S. 135; 25 L. Ed. 807, the Supreme Court of the United States said:

"It will be observed also, that there is no averment that during the long period over which the transactions referred to extended, the plaintiff ever made or caused to be made the slightest inquiry in relation to either of them. The judgments confessed were of record, and he knew it. It would not have been difficult to ascertain if the facts were so, that they were shams. The conveyances to Winn and Keller were also on record in the proper offices. If they were in trust for the defendant, as alleged, proper diligence could not have failed to find a clew in every case that would have led to evidence not to be resisted. With the strongest motives to action, the plaintiff was supine. If underlying frauds existed, as he alleges, he did nothing to unearth them. If was his duty to make effort. It should be borne in mind that when the judgments were assigned to Keller the country was in the throes of the Civil War. Lee had not surrendered. Gold and silver, in the currency of the time, were at a large premium. All real property was largely depreciated. The future was uncertain. A transaction which then seemed wise and fortunate a year later might be deemed greatly otherwise. It is hard to avoid the conviction that the plaintiff's conduct marks the difference between forethought in one condition of things and afterthought in another." 101 U. S., 25 L. Ed., 808.

See also Felix vs. Patrick, 145 U. S., 317; 36 L. Ed., 719; Lund vs. Mosley, 71 Fed. 19; Johnson vs. Standard Mining Co., 148 U. S., 370; 37 L. Ed., 485; Pearsall vs. Smith, 149 U. S., 236; 37 L. Ed., 717; Jones vs. Smith, 38 Fed., 381; Jesup vs. Ill. Central R. R. Co., 43 U. S., 561; 38 L. Ed., 553.

And that the doctrine of these cases has been fully adopted by this court. See Citizens Bank vs. Jeansonne, 120 La., 399; Poirier vs. Cypress Co., 51 South., 292; Succession of Dauphin, 112

332 La., 139.

The plea of prescription of two years must therefore be sustained.

The judgment appealed from is set aside and the suit is dismissed at plaintiff's costs.

Petition for Rehearing.

In the Supreme Court of Louisiana.

No. 18330.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

To the Honorable Jos. A. Breaux, Chief Justice, and Associated Justices of said Court:

Now into court, through his undersigned counsel, comes James A. Kinder, Trustee, plaintiff herein, and with respect represents:

That the judgment rendered herein in this cause on the 15th day of June, 1911, is contrary to the law applicable to the evidence, as established by the Supreme Court of the United States in construing the prescription of two years under the Bankruptcy Acts of the United States in the cases of Bailey vs. Glover, 21 Wall., 342 (22 L. Ed., 636); Rosenthal vs. Walker, 111 U. S., 528 (28 L. Ed., 395) and Tyler vs. Clews, 115 U. S., 528 (29 L. Ed., 467); and that a rehearing should be granted herein for the purpose of affirming the judgment of the lower court.

Petitioner avers that the judgment is erroneous and contrary to the adjudications of the United States Supreme Court in the following particulars, to-wit:

1st. For the reason that it was error to apply the decision in the case of Wood vs. Carpenter, 101 U. S., 135 (23 L. Ed., 807) as applicable to the issues in the case at bar, the cited case having been twice decided by the Supreme Court of the United States, as not applicable to cases involving the two years' prescription [illegible] under the bankrupt law of the United States, the issue in the case at bar.

In construing and applying the statute of limitation in the case of Wood vs. Carpenter, the Supreme Court of the United States was called upon to construe, not a statute of limitation under any law of the United States, but to construe a statute of limitation of the State of Indiana, and in construing that law or statute of limitation, it followed the adjudications of the Supreme Court of that State upon the same statute.

It is well settled by repeated decisions, that in construing State statutes, that the Supreme Court of the United States will follow the adjudications of the Supreme Court of that State upon the same statute. That was exactly what the Court did in the case of Wood vs. Carpenter.

It is equally well settled, that the adjudications of the Supreme Court of the United States upon laws and statutes of the United States are binding, and should be followed by the State Courts.

The question to be decided in the case at bar, being one arising

under the law of the United States the case cannot be governed by the cases in which the court was called upon to construe State statute of limitations, such as the case of Wood vs. Carpenter, but the question must be decided in accordance with the decisions of the Supreme Court of the United States in construing the statute of limitation arising under the bankrupt laws of the United States, such as was decided in the cases of Bailey vs. Glover; Rosenthal vs. Walker, and Treuer vs. Clews.

In two of the above cases, decided subsequently to the case of Wood vs. Carpenter, the Supreme Court of the United States expressly stated that the case of Wood vs. Carpenter, relied upon by the defendants, having been decided in accordance with the decision of the Supreme Court of the State of Indiana, and involving questions arising under that State's statutes, was inapplicable to cases involving the question and construction of laws and statutes of the United States, and in such case overruled the plea of prescription.

Under the circumstances we respectfully submit that the cases of Bailey vs. Glover, Rosenthal vs. Walker, and Treuer vs. Clews, being cases directly in point, and construing the statute of limitations of the United States bankrupt law, are the cases which govern this case, and not the case of Carpenter vs. Wood, and the cases cited as they were cases construing State statutes of limitations, and were expressly held in the cited cases not to apply to the statute of limitations of the bankrupt law.

In the case of Bailey vs. Glover the statute of limitation of two years was decided in bar of plaintiff's action, and was sustained by the lower courts, but was reversed on appeal to the Supreme Court of the United States. The other two cases the plea of prescription was overruled, and the judgments were affirmed by the Supreme Court of the United States, defendants in error in both cases citing and relying on the decision of Wood vs. Carpenter, the Supreme Court holding that case inapplicable to the cases, for the reasons above stated.

The case at bar is exactly the same as the cited cases, and should be decided in accordance with the decisions in those cases, as the findings and adjudications of the Supreme Court of the United States on the question of limitation of actions of the bankrupt law, being a law of the United States, is binding on the State Court, just as the Supreme Court of the U. S. follows the decisions of the highest courts of the States on questions and laws existing under state laws.

2nd. There was error in holding that the plaintiff was guilty of such negligence and laches as would preclude recovery in this suit, by his failure to cause Bryant to be examined before the Referee before the two years after the closing of the estate, when the evidence establishes the fact that the reason of his failure to do so was because he relied on the advice of his counsel.

In order to hold that plaintiff's failure in this particular amounts to a complete bar in this case, your Honors must hold, that a client holds himself liable for all faults or ill advice given by an attorney

at law to his client, and that no reasonable man would rely on the advice of counsel, and act thereon to his peril.

Parties having an attorney at law to whom they constantly look for the protection of their legal rights under your Honors' ruling are accountable for so doing.

Yet your Honors have held that a certain degree of sanctity attaches to the act of an attorney at law as an officer of the court, 16 A. 386, and the chief obligation of an attorney at law is to be true to the court and to his clients, 17 A. 1301, such being the case some degree of sanctity should be attached to the advice given by reputable counsel to his client, and when a client, having a reputable attorney as an adviser, furnished him by the Court, as are the attorneys of the trustees of the bankrupts, the clients or parties have a right to rely on the advice of their counsel, and should not be charged with such negligence as to preclude their recovery of assets for failure to disregard the advice of their counsel.

Judge Overton when he advised Mr. Kinder, the trustee, against proceeding further in the matter, was actuated by the highest motives and was prompted by an honest purpose, he was in error as to the validity of the deed the price exacted in the deed being more than the actual price Schabel had agreed to pay for his half interest, the Fraud in its nature Concealed itself, and the attorney for the plaintiff was honestly mistaken, any such error under the circumstances, [illegible] construed in connection with the cases decided by the Supreme Court of the United States in similar cases, viz: Bailey vs. Glover, Rosenthal vs. Walker and Treat vs. Clews, to have been such negligence as to preclude recovery in this case?

Our last answer to this question is to refer to the facts in the cited cases.

In the first case, Bailey vs. Glover, the bill was filed July 20, 1873, and the bankrupt had been discharged April 11, 1870, the statute of limitations began to run two years from the time that the action became maintainable, and more than three years had elapsed since the action had become maintainable, the defendant interposed the plea of two years limitations and the plea was sustained by the lower court, on appeal to the United States Supreme Court, the judgment of the lower court was reversed, and the plea overruled.

In that case on Dec. 1871, before the two years from the time that the action had become maintainable, one of the creditors a surviving partner of Winslow, filed a bill to set aside the bankrupt's discharge for fraud, and there is nothing to show that the assignee took any steps whatever to have any of the parties to whom the property had been transferred, or the bankrupt, examined before the filing of the bill in 1873, but it is to record, that one of the creditors did file a bill before the prescriptive term, showing knowledge of the fraud, yet the Supreme Court held that the plea of prescription was not applicable.

In the case at bar, we show that the plaintiff as soon as he was

advised that the transfer had been made, immediately caused his attorney to make an investigation, spent $25 or $30 of money in trying to secure the necessary evidence to uncover the fraud, and testified that had his attorney reported or had advised him to institute the suit that he would have spent every cent he had to
337 have the sale set aside but his attorney not being able [illegible] on account of the Fraud concealing itself, was not-lected in the matter, and advised the plaintiff to drop the matter, as he could not secure the necessary evidence to set the sale aside, yet under such a showing, your Honors hold that the defendant can profit by his fraud, and the creditors must suffer for the attorney's error of judgment.

In the cited case, the Supreme Court of the United States, in reversing the lower court said: "To hold that by concealing a fraud or by committing a fraud in such a manner that it conceals itself until such a time as the party committing the fraud could plead the Statute of Limitations to protect it, is to make the law which was designed to prevent fraud, the means by which it is made successful and secure."

Now this was the case involving real estate, and the same arguments could, and no doubt were urged, that the deeds were of record, and that the parties could have been examined before the Referee prior to the two years, and that the creditors had knowledge of the fraud, from the fact that one of them had instituted suit to set aside the discharge on the ground of fraud, before the expiration of the two years.

We say therefore, that the above decision is binding on your Honors in deciding a case involving the Statute of Limitations of the Bankrupt law, unless it has been subsequently overruled, and that what the Supreme Court of the United States decided in a question involving the construction or application of a statute of limitation cannot be authority in this case in view of the fact that the very same question has been thrice decided by the court. Those decisions on the same question cannot be set aside and disregarded in considering the case at bar, involving as it does, the very identical questions.

In the later case of Rosenthal vs. Walker, the Court fully sustains the position taken by plaintiff in this case, to wit, that
338 the Supreme Court of the United States having decided cases construing the statute of limitations of the bankrupt law, that those decisions are conclusive on that point and are binding on all courts until overruled by the Supreme Court. The court said:

"The case of Bailey vs. Glover is a decision construing the statute relied on in this case, and unless subsequently overruled by this court is conclusive of the point under discussion. It has never been overruled. The plaintiff in error relies on the case of Wood vs. Carpenter 101 U. S. 135, and Bank vs. Carpenter Id. 567. The first was an action at law, the second a suit in equity. The court in both cases was called on to construe a statute of limitations of the

of Indiana, and it followed the adjudications of the Supreme
of the State upon the same statute."
either case refers to Bailey vs. Glover, or can be held to over-
or modify it. The case of Bailey vs. Glover has been often
by this court, but has never been doubted or qualified."
view of this plain and unambiguous language, we are firmly of
pinion that it was error for your Honors to disregard the de-
s of the Supreme Court of the United States construing the
of Limitations of the bankrupt law, and overrule these de-
with a case, which the Supreme Court of the United States
ly held was inapplicable to such cases.
that case the suit was brought more than four years after the
of action had accrued.
ere is nothing to show that any steps whatever was taken to
h the fraudulent transfer, until on the trial of the case, as
Honors will see that there was a bill of exception taken to the
exception of evidence on the trial of the case, referring to
one of the sales. That evidence could have been obtained
by an examination before the Referee, yet nothing was done
the trial of the case and the Court overruled the plea of pre-
tion.
e same argument as to failure to interrogate witnesses could
been urged, and no doubt was urged, as the case of Woods vs.
ter was relied on by the defendant, and was held to be in-
able to the Statute of limitations of the Bankrupt law. This
Louisiana case.
e facts in the Trear vs. Clews case are fully stated in our sup-
al brief, and show that plaintiff was aware of the fraud by
ting suit against Trear before the two years after the action
become maintainable, but did not examine Trear nor any
witness until a half years after the two years' limita-
had expired, when upon examination before the Referee, plain-
ascertained that Mrs. Trear was the owner of the stock sought to
covered and made her a party to the suit.
s. Trear interposed the plea of two years, and relied on Woods
Carpenter, but the Supreme Court held that the cases of Bailey
Glover and Rosenthal vs. Walker being cases construing the
te of Limitations of the Bankrupt law, were conclusive of the
ions at issue and that the case of Woods vs. Carpenter was in-
able to such cases.
e same argument as to failure to interrogate witnesses could
no doubt was made, but the Supreme Court held that this was
such negligence as would preclude recovery, and sustained the
court's judgment overruling the plea of prescription.
ere is nothing to show that Clews' failure to have Mrs. Trear
a party to the suit before the two years, was due to any advice
sel, or that he had made any investigation to ascertain
er the stock had been purchased by Mrs. Trear, yet the plea
was not sustained.
All the Court ever held, was that the plaintiff must show
that he was not guilty of negligence or laches. We say with-

out fear of contradiction, that the negligence must consist of doing or not doing what a reasonable man would do or not do under like circumstances.

What action would a reasonable or average man take or pursue under circumstances similar to that of plaintiff. The first thing he did was to see if the land was carried on the schedule, finding that it was not, he did what any reasonable man would do, he called the matter to his attorney's attention, and instructed him to begin an investigation as to whether or not the sale could be set aside for fraud. He himself tried to get evidence from the residents of Welch, but he says everything was shut up. After investigating the matter, his attorney became satisfied that he could not set the sale aside, not having been able to secure the evidence, and advised plaintiff to drop the matter.

Reasonable diligence does not consist in doing everything a man can do, or to exhaust all means within his power, for then nothing more could be done, all he must show, is that he acted under the circumstances as an ordinarily reasonable man would have acted, and we say plaintiff did this, and cannot be charged with such negligence as to preclude his recovery in this suit, because he did not disregard the advice of his attorney and insist in exhausting all means afforded him by the law in his efforts to discover the fraud.

This is more than the law requires, all the law requires is reasonable diligence, not that the Trustee exhaust all means offered him by law, and we respectfully submit that plaintiff did use reasonable diligence when he caused his attorney to make the investigation and was not guilty of negligence in accepting the advice of his
341 counsel in his conclusions, and that as soon as he secured the necessary evidence, he at once instituted the suit.

As an evidence of his diligence and faithfulness in this case we refer your Honors to plaintiff's final report to the Judge of the U. S. Court, which is evidence in the transcript. Not having the record we are unable to cite your Honors to the page of the transcript but it will repay your Honors' trouble to read this report, it will show that plaintiff and his attorney were diligent in "looking for assets that should have been" as he expresses it to the Judge, and the plaintiff congratulates his attorney for his faithful efforts in that direction. This report was made at an unsuspicious time and goes to prove that plaintiff was not negligent, but was very diligent.

We feel assured that your Honors will give this application due consideration, and as we want to be perfectly fair with the Court, we will state that it is our purpose to apply for a writ of error to the Supreme Court of the United States if your Honors refuse the rehearing, and sustain the plea of prescription, for we feel that the Supreme Court of the United States having decided similar cases against the plea of prescription, will finally give judgment in plaintiff's favor, for on the merits, there can be no doubt that the transfer was made in fraud of creditors and with the purpose to defraud, hinder and delay them.

Wherefore the premises considered, petitioner prays that a re

hearing be granted herein, and there be judgment in favor of plaintiff affirming the judgment appealed from.

For all such orders and decrees necessary in the premises, and for full general and equitable relief.

(Signed) GOUDEAU & BARBE.
Attys for Petitioners.

(Endorsed:) No. 18,330. Jas. V. Kinder, Trustee, vs. Edward Scharff et al. Application for Rehearing. Filed June 26, 1911. (Signed) John V. Klotz, Dep. Clerk.

Rehearing Refused.

(Extract from Minutes.)

NEW ORLEANS—*Thursday June 29th*, 1911.

The Court was duly opened, pursuant to adjournment. Present Their Honors: Joseph V. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Somerville, Associate Justices.

No. 18330

JAMES V. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

By the Court.

It is ordered that the rehearing applied for in this case be refused.

Petition for Writ of Error and Assignment of Errors.

UNITED STATES OF AMERICA,
State of Louisiana.

To the Honorable the Chief Justice of the Supreme Court of Louisiana:

The petition of James V. Kinder, trustee of the bankrupt estate of Cleophas Benoit, respectfully shows that on the 15th day of June A. D. 1911, the Supreme Court of the State of Louisiana rendered a final judgment against your petitioner in a certain cause wherein James V. Kinder, trustee, was plaintiff and appellee and Edward Scharff et al, were defendants and appellants, dismissing said plaintiff's suit with costs, as will appear by reference to the record and proceedings in said cause; and that said court is the highest court of said state in which a decision in said suit could be had.

And your petitioner claims the right to remove said judgment to the Supreme Court of the United States by writ of error, under section 707 of the Rev. Statutes of the United States because said state supreme court so erred in misconstruing a certain provision of the bankruptcy law of the United States as to defeat the

rights of said plaintiff, as appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore your petitioner prays the allowance of a writ of error returnable unto the Supreme Court of the United States, and for citation, and your petitioner will ever pray.

(Signed) J. A. KINDER, *Trustee*
Petitioner.

(Signed) L. A. GOUDEAU,
(Signed) HANNIS TAYLOR,
Attorneys for Petitioner.

Order Granting Writ of Error.

Let the writ of error issue without supersedeas as prayed. New Orleans, Louisiana, August 28th, 1911.

(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of Louisiana.

Supreme Court of the State of Louisiana.

JAMES A. KINDER, Trustee,
vs.
EDWARD SCHARFF et al.

Now comes the said plaintiff in error, and respectfully submits that in the record, proceedings, decision, and final judgment of the Supreme Court of the State of Louisiana, in the
311 above entitled cause, there is manifest error in this, to wit:

The Supreme Court of Louisiana erred in reversing the judgment rendered by the District Court of the Parish of Calcasieu in the above entitled cause for the reason that the judgment of the said District Court on the construction of the limitation clause of the bankruptcy act of two years followed the adjudications of the Supreme Court of the United States in the construction of said act, such construction being clearly set forth in the following cases: Bailey vs. Glover, 88 U. S. 342; Rosenthal vs. Walker, 111 U. S. 185; Treat vs. Clews, 115 U. S. 528; Hammond vs. Whittredge, 201 U. S. 538.

II.

The said Supreme Court of Louisiana erred in reversing the said judgment of the said District Court of the Parish of Calcasieu, construing the said provision of said bankruptcy act by applying to said federal statute the rule of construction applicable to state statutes of limitation. Such construction has been twice declared by the Supreme Court of the United States to be inapplicable to the construction of said bankruptcy law.

III.

The said Supreme Court of Louisiana erred in reversing the said judgment of the said District Court of the Parish of Calcasieu, and in

-sing the cause of this plaintiff in error with costs, because it
nstrued and misapplied the said limitation provision of said
ppley act to the facts as they appeared in the record before it.
(Signed) L. A. GOUDEAU,
(Signed) HANNIS TAYLOR,
Attorneys for Plaintiff in Error.

dorsed:] No. 18,330. Supreme Court of Louisiana. James A.
r, Trustee, vs. Edward Scharff et als. Petition for writ of Error
ssignment of Errors. Filed August 28, 1911. (Signed) John
otz, Deputy Clerk.

Writ of Error.

D STATES OF AMERICA, *ss.*

President of the United States of America to the Honorable the
ges of the Supreme Court of Louisiana, Greeting:

ause in the record and proceedings, as also in the rendition of
judgment of a plea which is in the said Supreme Court of
ain before you, or some of you, being the highest court of law
ity of the said State in which a decision could be had in the
n between James A. Kinder, Trustee, vs. Edward Scharff et al.,
Number 18,330 of the Docket of said Court wherein was drawn
estion the validity of a treaty or statute of, or an authority
ised under, the United States, and the decision was against their
y, or wherein was drawn in question the validity of a statute
an authority exercised under said State, on the ground of their
ng repugnant to the Constitution, treaties or laws of the United
, and the decision was in favor of such their validity, or
in was drawn in question the construction of the clause of the
Constitution, or of a treaty, or statute of, or commission held under
United States, and the decision was against the title, right,
ge or exemption specially set up or claimed under such clause
said Constitution, treaty, statute, or commission, a manifest
error hath happened, to the great damage of the said James A.
r, Trustee as in his complaint appears. We being willing that
t any hath been, should be duly corrected, and full and speedy
done to the parties aforesaid in this behalf, do command
f judgment be therein given, that then under your seal, dis-
and openly, you send the record and proceedings aforesaid,
with all things concerning the same to the Supreme Court of
the United States, together with this writ, so that you have
the same at Washington, within 30 days from the date hereof,
said Supreme Court, to be then and there held, that the record
roceedings aforesaid being inspected, the said Supreme Court
cause further to be done therein to correct that error, what of
and according to the laws and customs of the United States,
be done.

ness the honorable Edward D. White, Chief Justice of the said

Supreme Court, the 28th day of August, in the year of our Lord one thousand nine hundred and eleven.

(Signed) H. J. CARTER.
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

Allowed by
(Signed) JOS. A. BREAUX,
Chief Justice.

(Endorsed:) No. 18,330. James A. Kinder, Trustee Versus Writ of Error Edward Scharff et al. Copy of a Writ of Error lodged in the Clerk's Office of the Supreme Court of Louisiana in pursuance of the statute in such cases made and provided, this 28 day of August, one thousand nine hundred and eleven. (Signed) L. A. Goudeau. (Signed) Hamels Taylor, Attorneys for Plaintiff in Error. Filed August 28, 1911. (Signed) John A. Klotz, Deputy Clerk.

Bond of Appeal.

UNITED STATES OF AMERICA

Know all men by these presents, That we, James A. Kinder, trustee and the Southwestern Surety Insurance Company are held and firmly bound, jointly and severally unto Edward Scharff and Cleophe Benoit, in the sum of One thousand Dollars, lawful money of the United States of America, to be paid to the said Edward 347 Scharff and Cleophe Benoit, their heirs, Executors, administrators, and assigns; for which payment well truly to be made, we bind ourselves, and each of us by himself, and each of our heirs executors and administrators, firmly by these presents;

Sealed with our seals, and dated the 28th day of August in the year of our Lord nineteen hundred and eleven.

Whereas, the said James A. Kinder Trustee having heretofore, to wit, on the 28th day of August 1911 been granted a writ of error to the Supreme Court of the United States, from and to reverse the decree rendered on the 15th day of June 1911, by the Supreme Court of the State of Louisiana in the suit of James A. Kinder Trustee vs. Edward Scharff, et al. No. 18,330, of the docket thereof.

Now the condition of the above obligation is, That if, the above bounden James A. Kinder, Trustee shall prosecute said writ of error to effect, and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

(Signed) J. A. KINDER. [L. S.]
(Signed) SOUTHWESTERN SURETY INS. CO. [L. S.]
[SEAL.] (Signed) Per Pro. JNO. C. WASEY, *Agent* [L. S.]

Signed, Sealed and Delivered in the presence of
(Signed) E. J. SULLIVAN, JR.
(Signed) L. A. GOUDEAU.

Approved.
(Signed) JOS. A. BREAUX,
Chief Justice.

(Endorsed:) No. 18,330. Supreme Court of Louisiana. James A. Kinder, Trustee, vs. Edward Scharff et al. Bond for Writ of Error. Filed August 28th, 1911. (Signed) John A. Klotz, Deputy Clerk.

348 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing three hundred and forty-seven (347) pages contain a full, true and complete copy of the proceedings had in the Fifteenth Judicial District Court, for the Parish of Calcasieu, in a certain suit where James A. Kinder, Trustee, was plaintiff, and Edward Scharff, et al., were defendants; and, also, of all the proceedings had in the Supreme Court on the appeal taken by said James A. Kinder, Trustee, which appeal is now on the files thereof under the No. 18,330.

In Testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at the city of New Orleans, this the 15th day of September, Anno Domini, one thousand nine hundred and eleven, and of the Independence of the United States of America, the one hundred and thirty-sixth.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER, *Clerk.*

349 *Certificate of the Chief Justice.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 15th day of September, A. D. one thousand nine hundred and eleven.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

350 *Clerk's Certificate.*

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Joseph A. Breaux is the Chief Justice of said Court, and that his signature to the above certificate is genuine.

In witness whereof I hereunto set my hand and the seal of the Court aforesaid at the city of New Orleans, this 15th day of September, A. D. one thousand nine hundred and eleven.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER, *Clerk.*

351 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between James A. Kinder, Trustee, vs. Edward Scharff et al., being numbered 18330 of the Docket of said Court, wherein was drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction

352 of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said James A. Kinder, Trustee, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Edward D. White, Chief Justice of the said

Supreme Court, the 28th day of August, in the year of our Lord one thousand nine hundred and eleven.

H. J. CARTER,
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

Allowed by
JOSEPH A. BREAUX,
Chief Justice.

[Endorsed:] No. 18,330. James A. Kinder, Trustee, versus Edward Scharff et al. Writ of Error. Filed August 28, 1911. John A. Klotz, Deputy Clerk.

353 STATE OF TEXAS.
County of Matagorda:

Before me, the undersigned authority, on this day personally came and appeared Edward Scharff, who declared unto me in the presence of the hereinafter named and undersigned competent witnesses, that he has established his domicile in the town of Markham, County of Matagorda and State of Texas, and that he does hereby waive and renounce all rights and claims to a domicile previously established and maintained by him prior to the month of December, 1908, or at any other time, in the town of Welsh, Louisiana, and declares himself to be a resident of the town of Markham, County of Matagorda and State of Texas.

Thus done and passed at Markham, Texas, in the presence of H. T. Anderson, and G. S. Byars, competent witnesses, who hereunto sign as such, together with said appearer and me, Notary, on this the 9 day of March, A. D. 1910.

(Signed) EDWARD SCHARFF.

Witnesses:
H. T. ANDERSON
G. S. BYARS.

H. RADER,
[SEAL.] *Notary Public, Matagorda County, Texas.*

STATE OF LOUISIANA,
Parish of Calcasieu:

Office of Clerk, 15th Judicial District Court.

I hereby certify that the above and foregoing is a true and correct copy of the original affidavit of Edward Scharff, filed in this office March 11th, 1910, and duly recorded March 18th, 1910, in Book "107," of Conveyances, page 171.

In testimony whereof, witness my official signature and seal of office at Lake Charles, Louisiana, this 1st day of September, A. D. 1911.

[Seal of the Clerk of the Parish of Calcasieu.]

M. E. CRAWFORD,
Deputy Clerk Court.

354 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Edward Scharff, Esq., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein James A. Kinder, Trustee, is plaintiff-in-error and Edward Scharff is defendant-in-error, to show cause, if any there be, why the judgment rendered against the said James A. Kinder, Trustee, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 28th day of August, in the year of our Lord one thousand nine hundred and eleven.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

355 [Endorsed:] Supreme Court of the State of Louisiana. No. 18,330. James A. Kinder, Trustee, vs. Edward Scharff et al. Citation. Filed Sept. 7, 1911. Paul E. Mortimer, Clerk.

Sheriff's Return.

Rec'd Sept. 2, 1911, and on the 2nd day of Sept., 1911, I served a copy of the above citation on C. A. McCoy in person, at Lake Charles, La., said C. A. McCoy's name appearing on the docket as attorney for Edward Scharff, defendant in error. The said Edward Scharff having left the State, as per certificate of the Clerk of Court, hereto attached.

D. J. REID, *Sheriff*,
Per T. P. SPARKS, *Dy Sheriff*.

LAKE CHARLES, LA., *Sept. 2nd*, 1911.

Before me, the undersigned authority, personally came and appeared T. P. Sparks, the party who served this citation on C. A. McCoy, att'y, who after having been first duly sworn, deposes and says that all the facts in said sheriff's return are true and correct, and that he is a duly and legally appointed deputy sheriff of Calcasieu Parish, La. T. P. SPARKS.

[Seal L. A. Goudeau, Notary Public, Calcasieu Parish, La.]

L. A. GOUDEAU,
Notary Public.

Endorsed on cover: File No. 22,864. Louisiana Supreme Court. Term No. 99. James A. Kinder, Trustee, Plaintiff in Error, vs. Edward Scharff et al. Filed September 22, 1911. File No. 22,864.

FILED
DEC 2 1913
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 99.

EDGAR N. COLLINS, TRUSTEE, PLAINTIFF IN ERROR,

vs.

EDWARD SCHARFF ET AL., DEFENDANTS IN ERROR.

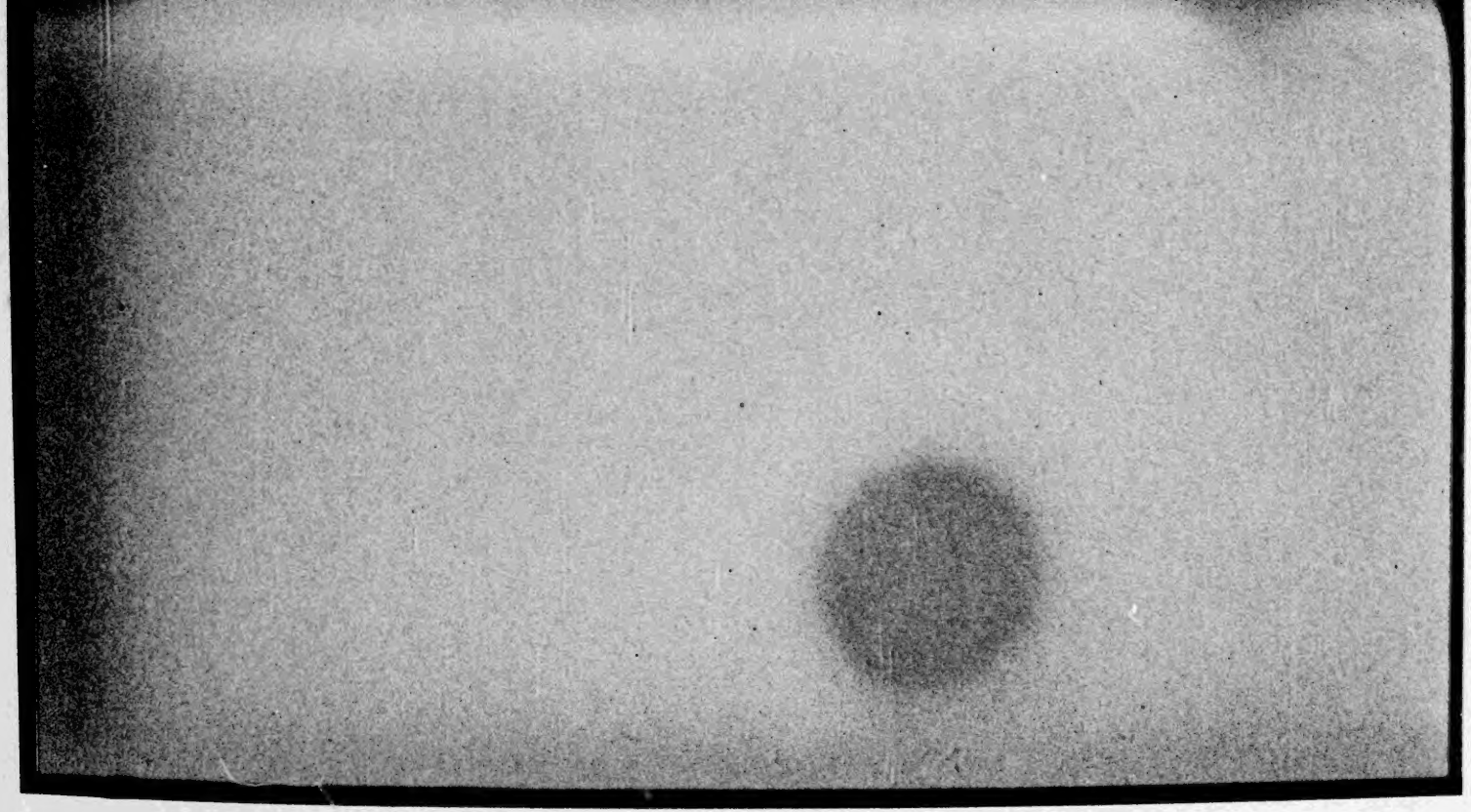
IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF FOR PLAINTIFF IN ERROR.

A. P. PUJO,
HANNIS TAYLOR,
Counsel for Plaintiff in Error.

L. A. GOUDEAU,
W. B. WILLIAMSON,
Of Counsel.

THE LAW REPORTER PRINTING CO., WASHINGTON, D. C.



INDEX.

	Page.
Argument	19
Assignment of Errors	8
Conclusions	43
Statement of the Case	3
Summary of the Leading Facts	9
Syllabus	1

AUTHORITIES.

Bailey *vs.* Glover, 21 Wall., 342-350	32-35
Bilafsky *vs.* Abraham, 67 N. E. Rep., 318	39
Board of Levee Com'rs. *vs.* Tensas Delta Land Co., 204 Fed Rep., 745	36-37
Calhoun Gold Mining Co. *vs.* Ajax Gold Mining Co., 182 U. S., 499	42
Galliher *vs.* Cadwell, 145 U. S., 368	38
Hammond *vs.* Whittridge, 204 U. S., 538	8
Rock Island Plow Co. *vs.* Reardon, 222 U. S. Rep., 354-364	38
Rosenthal *vs.* Walker, 111 U. S., 185	8, 36
Trear *vs.* Clews, 115 U. S., 528	35-36
United States *vs.* Minor, 114 U. S., pp. 233, 240	37
Waters-Pierce Oil Co. *vs.* Texas, 212 U. S., 86	43

SYLLABUS.

1. Paragraph D, section 11, of the Bankrupt Act of 1898, as amended, providing that "no suit shall be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed," is a statute of limitation, and when pleaded as a bar to a suit to set aside an alleged fraudulent sale, must be construed and applied as other statutes of limitation. Bailey *vs.* Glover, 21 Wall., pp. 342-350.
2. Where fraud is the foundation of the action, the limitation of two years, under the Bankrupt Act, does not begin to run, in the absence of negligence or laches of the plaintiff, until the discovery of the fraud. Trace *vs.* Clews, 115 U. S., pp. 528-542; 29 L. Ed., p. 467.
3. In suits in equity, where relief is sought on the ground of fraud, and the party injured remained in ignorance of the fraud without fault or want of diligence on his part, limitation does not begin to run until the fraud is discovered, although there are no special circumstances, and no effort on the part of the party committing the fraud to conceal it. Board of Levee Com'rs. of Tensas Basin Levee Dist. *vs.* Tensas Delta Land Company, 201 Fed. Rep., p. 736.
4. In a suit in equity by a public board of levee commissioners, to cancel deeds to lands sold by such board for fraud, complainant is not chargeable with notice of the fraud by the fact that it consisted of bribery of persons who were then officers and members of the board and its agent, nor because it did not take active measures to discover it, where the transaction was fair on its face, and there was nothing to cause suspicion, until the facts were incidentally learned by a third person who communicated them to plaintiff. Id.

5. A suit by a trustee to recover assets alleged to have been fraudulently transferred by the bankrupt within four months prior to the filing of petition, ought not to stand like a suit between private parties. U. S. *vs.* Minor, 114 U. S., pp. 233-240; 5 Sup. Ct. Rep., 836; 29 L. Ed., 110.
6. Courts of the United States follow their own adjudications in the interpretation, administration, and enforcement of Federal statutes, and not those of State courts. Calhoun Gold Min. Co. *vs.* Ajax Gold Min. Co., 182 U. S., pp. 499-510.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 99.

EDGAR N. COLLINS, TRUSTEE, PLAINTIFF IN ERROR,

vs.

EDWARD SCHARFF ET AL., DEFENDANTS IN ERROR.

BRIEF OF PLAINTIFF IN ERROR.

Statement of the Case.

This case is before the court on writ of error to the Supreme Court of Louisiana to review its decision maintaining the plea of prescription to plaintiff's action to set aside an alleged fraudulent sale of real property made by the bankrupt within four months prior to the filing of the petition in bankruptcy (Tr., decision of the Supreme Court of Louisiana, pp. 210 to 214; petition for rehearing, pp. 215 to 221; petition for writ of error and assignments of error, pp. 221 to 223; writ of error, pp. 223-224).

After the writ of error was sued out and lodged in this court, James A. Kinder died and Dr. Edgar N. Collins was appointed trustee, and authorized by the bankruptcy

court to prosecute the suit, for which purpose he has appeared and made himself a party.

Cleopha Benoit, one of the defendants, filed his petition in the United States District Court for the Western District of Louisiana, on June 1, 1904, praying to be adjudged a voluntary bankrupt.

He was adjudged a bankrupt on the 4th day of June, 1904. His debts, consisting almost entirely of unsecured claims, amounted to $8,602.01, and his assets $10,308.08 (Tr., Order of Adjudication, p. 125; Accounts and Notes, p. 138).

James A. Kinder was appointed trustee, and after qualifying assumed the duties of his office (Tr., pp. 123, 124, and 125).

June 28, 1905, the trustee presented his final account of administration of the affairs of the bankruptcy, showing that out of $8,000 in accounts receivable, he had been able to collect only $111.62, etc., and prayed to be discharged from his trust (Tr., pp. 129-130). Hearing was had on this petition and the trustee discharged June 28, 1905 (Tr., p. 143). Judgment of discharge of the bankrupt, was granted by the District judge at the city of Shreveport, La., November 18, 1905 (Tr., pp. 143-144).

October 15, 1908, James A. Kinder filed a petition, as trustee, in which he averred that Cleopha Benoit, on the second day of May, 1904, was the owner of 1,600 acres of land situate in the State of Texas, which had been transferred by him, with intent to defraud his creditors, to Edward Scharff, of Calcasieu Parish, Louisiana; that the evidence of the fraudulent nature of this transaction had just been discovered by him; that no consideration had been paid; and that, as a matter of fact, the title still vested in the trustee, the sale having been made within less than one month before the filing of the voluntary petition in bankruptcy. He further averred

the necessity of reopening the bankruptcy and the appointment of an attorney to assist the trustee in recovering the property.

Upon this petition the district judge reopened the bankruptcy and L. A. Goudeau, was appointed attorney to represent the trustee (Tr., pp. 139-140).

January 7, 1909, the trustee was authorized to file and prosecute to final judgment all necessary legal proceedings to recover the property transferred by Benoit to Scharff, for the benefit of the bankruptcy (Tr., p. 141).

January 7, 1909, the trustee filed suit in the District Court of Calcasieu Parish, Louisiana, against Edward Scharff and Cleopha Benoit, to set aside the sale by Benoit to Scharff, executed on the second day of May, 1901, on the ground that the defendant Benoit was insolvent to the knowledge of Scharff; that there was no consideration paid at the time of the execution of said sale, but that said sale was made for the purpose of placing the property out of the reach of Benoit's creditors, and for the purpose of defrauding them, etc., etc. (Tr., pp. 1, 2, and 3).

After the adverse disposition of certain exceptions urged by Scharff he pleaded that the action was barred by the Statute of Limitations, of two years, provided by paragraph d of section 11, of the bankruptcy act of 1898, and also that plaintiff was without right of action. This exception was referred to the merits. The case was then put at issue, by answer, in which Scharff averred that the purchase was made by him in good faith, and the consideration paid in cash, or the assumption of valid and existing mortgages upon the property, amounting to the full valuation thereof, etc., etc. (Tr., pp. 9 and 10).

The case was tried upon the merits and judgment rendered, overruling the plea of prescription, and the

exception of no right of action, and declaring the transfer from Benoit to Scharff, made on the second day of May, 1904, null and void, and in contravention of the bankruptcy act of 1898. The judgment ordered Scharff to reconvey the property to the trustee, and referred him to the bankruptcy court for the adjudication of such rights as he might have (Tr., pp. 14, 15).

On appeal to the Supreme Court of Louisiana the plea of prescription of two years was sustained and the judgment of the lower court set aside and the appeal dismissed at plaintiff's cost (Tr., pp. 210-214).

After denial of the petition for rehearing, this writ of error was sued out, for reasons assigned and fully set out hereinafter (Tr., pp. 222-223).

It appears from the record that the district court, in which this case was tried upon the law and the facts, gave a sweeping judgment in favor of the plaintiff in error. That judgment recites that:

> "When, after hearing the pleadings, the evidence and the arguments of counsel for both the plaintiff and the defendant, Edward Scharff, the court considering the law and the evidence to be in favor of the plaintiff, James A. Kinder, trustee, and against the defendants, Edward Scharff and Cleopha Benoit, and for the reasons orally assigned, overruled the plea of prescription and exception of no right of action, and ruling on the merits, it is ordered, adjudged, and decreed that there be judgment in favor of the plaintiff, James A. Kinder, trustee, and against the defendants, Edward Scharff and Cleopha Benoit, overruling and declaring null, void, as having been done in contravention of the Bankrupt Act of the United States of the year 1898, the deed executed on the 2d day of May, 1904, by the said Cleopha Benoit to the said Edward Scharff to the property owned by the said Cleopha Benoit, in the county of Matagorda, State of Texas, containing 1,600 acres of land more or less."

When the case passed for judgment to the Supreme Court of Louisiana, that court admitted that there was no error in that part of the judgment of the district court, holding that the conveyance in question was fraudulent and consequently null and void because in violation of the Bankruptcy Act. After saying that "*while the property now being sued for may have been recoverable for the creditors of the bankrupt estate, on the ground that the sale of it had been made in fraud of their rights,*" the Supreme Court of Louisiana added: "*Albeit, perhaps, fraudulent and annulable at the suit of the creditors, or of the trustee in bankruptcy, their legal representative.*" In that way the Supreme Court in question, by refusing to re-examine or reverse, affirmed that part of the finding of the district court in which it had been adjudicated, after a careful examination of the facts, that the conveyance in question was fraudulent and void under the Bankruptcy Act. Admitting that the district court was correct in so finding, the Supreme Court in question said:

> "The only defense that need be examined is that of prescription. Sec. 11, paragraph d of the Bankruptcy Act, reads as follows: 'Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.' Section 2 of said act, sub-head 8, provides: 'Close the estates whenever it appears that they have been fully administered by approving the final accounts and discharging the trustees.' In this case the estate was 'closed' on June 28, 1905, and the present suit was filed on January 7, 1909. The prescription period of two years had therefore elapsed before the suit was filed. The learned counsel for the plaintiff argues that in the present case the estate '*had not been fully administered,*' *since the property now being* sued for had not been included in the administration."

Thus it appears that the judgment of the Supreme Court of Louisiana was confined entirely to the construction of a Federal statute of limitations, and our contention is that it construed it contrary to the law as laid down by this court.

Assignment of Errors.

I. The Supreme Court of Louisiana erred in reversing the judgment rendered by the district court of the parish of Calcasieu, in this cause, for the reason that the judgment of the said district court on the construction of the limitation clause of the bankruptcy act of two years followed the adjudications of the Supreme Court of the United States in the construction of said act, such construction being clearly set forth in the following cases: Bailey *vs.* Glover, 88 U. S., 342; Rosenthal *vs.* Walker, 111 U. S., 185; Treat *vs.* Clews, 115 U. S., 528; Hammond *vs.* Whittredge, 201 U. S., 538.

II. The said Supreme Court of Louisiana erred in reversing the said judgment of the said district court of the parish of Calcasieu construing the said provision of said bankruptcy act by applying to said Federal statute the rule of construction applicable to State statutes of limitation. Such construction has been twice declared by the Supreme Court of the United States to be inapplicable to the construction of said bankruptcy law.

III. The said Supreme Court of Louisiana erred in reversing the said judgment of the said district court of the parish of Calcasieu, and in dismissing the cause of this plaintiff in error, with costs, because it misconstrued and misapplied the said limitation provision of said bankruptcy act to the facts as they appeared in the record before it.

A Summary of the Leading Facts.

Before attempting to solve the questions of law presented by the assignments of error the court should have clearly before it the following facts:

Cleopha Benoit, the bankrupt, purchased from L. E. Ward, by deed of date November 1, 1901, 1,600 acres of land in Matagorda County, Texas, for $12,000, $4,000 of the purchase price being paid in cash, $7,000 by the assumption of five notes for $1,400 each, and $1,000 by the execution of two notes to the order of L. E. Ward for $500 each (Tr., 150-152).

October 2, 1902, Benoit sold a one-half interest in the property to Frank C. and J. H. Labit, of the Parish of Calcasieu, State of Louisiana, for the sum of $8,000, $1,900 of which amount was paid, and the residue, $6,100, by the assumption of the vendor's lien notes affecting the property, and by the execution of one note for $500 by the Labits to Benoit (Tr., pp. 153-154).

May 2, 1904, Frank C. Labit and J. Howard Labit, reconveyed to Benoit, the one-half interest previously acquired by them, for $6,643.35, for which sum Benoit gave them his note for $543.35 and assumed the balance due on the notes affecting the property, and particularly described in the act of sale (Tr., pp. 156-158).

On the same day, to-wit, May 2, 1904, Benoit pretended to sell and transfer the entire property to Scharff for an alleged consideration of $7,200, the receipt of which was acknowledged, and the assumption by Scharff of the four notes for $1,400 each, and one note for $500, executed by Benoit in favor of L. E. Ward, due November 1, 1903 (Tr., pp. 3-4).

The various deeds referred to were filed and recorded in Matagorda County, Texas.

Benoit testified that he was greatly distressed because of his inability to meet his obligations, and that one day

he met Scharff on the street, and in reply to his inquiry how business was, informed him that he was going to lose everything that he had; that he had his land in Texas only, and that he was sure he could not pay for it (Tr., p. 37). Scharff replied: "That is too bad" (Tr., p. 37). Several days after this occurrence, Scharff called Benoit to come to him, and to quote from Benoit's testimony:

> "He said, if you want I can sell that land for you. I said, Mr. Scharff, if you can do that for me, you sure do a whole lot, because I hate to lose that land. He said: 'Sleep good over . . . it.' . . . 'I will save that land for you.' I said, all right, and I went back home, and a few days after, I said I would like to know how you can save that land for me. I owe over six thousand dollars on the land and I don't see how you can save it for me, and I go talk about it. . . . I told my wife. . . ."

Benoit then began to restate what he had told his wife, but was prevented from so doing by the court.

Continuing:

> "Well, I went to see Mr. Scharff. I went up to see Mr. Scharff and I knocked on his door and he opened the door. He told me to get in and I got in. And we talked a little, and I asked him, I said: 'Mr. Scharff, I come to see you about what you told me the other day about my land.' Well, he said, I want to make a proposition to you. 'Well,' I said, 'I would like to know what it is.' He said, if you want to deed me that land I will pay for the land and when I sell the land, I pay you your money back, and I take my money, and we divide the profit. I said: 'That is all right, if you can do that; I is very glad to get that, because I want to pay what I owe, and I got nothing to pay what I owe.' 'Well,' he said, 'look here, if I take that land you got to give me time to sell it.' I said: 'Yes, sir.' . . .
>
> "I said, take the time you want, Mr. Scharff;

> if you want to do that with me, I say take all the time you want. He said: 'Maybe I can't sell that land before four or five years.' I said: 'That's all right; take your time.' A few days after that they were pressing me for what I owed; all the time; I have some other debt; I could not pay; I spend all the money I get . . . . . ." (Tr., p. 37).

This conversation between Benoit and Scharff took place about one month before the property in question was placed in Scharff's name (Tr., p. 38).

In the interim, Benoit called on Mr. L. E. Robinson, a prominent man of affairs, residing at Welsh, and offered to sell him the land. Robinson told him he could not buy his land, but that he might give him a trade if the Texas land suited him, provided Benoit would take 400 acres of certain lands of Robinson, near Welsh, at $30 per acre. But that he would not make a definite proposition until he had examined Benoit's land in Texas. After examination of the property, Robinson offered to pay $40 an acre for it, if Benoit would take, in exchange, 400 acres at $30 per acre. Had the exchange taken place, Benoit would have been in Robinson's debt, but Robinson offered him time to pay the difference, and assured him that if he needed money to put on the land, he (Robinson) would help him. Benoit immediately called on Scharff and informed him of the proposition made by Mr. Robinson and Scharff said:

> "Well, you had better not do that; you had better deal with me, because you can not pay Robinson that money you are going to owe him, and he is going to take your land back. You better make that deal with me as you will save better. Anything you need, if I can, I will help you."

And Benoit replied:

> "All right, then, I will take your proposition" (Tr., pp. 38 and 39).

Benoit testified positively that neither at the time or before the transfer of the property to Scharff did he receive money or other thing of value from him (Tr., p. 39).

After the transfer Benoit called on Scharff and informed him that he needed money. Scharff replied, "How much do you want?" and asked him if $200 would suffice, and whether Benoit would execute his note for this amount. Benoit executed his note for the $200 and received the money. This was three or four months after Benoit had gone into bankruptcy. Some time after this Benoit received a letter from his brother-in-law, Fauvet, in which he said that he could sell the land in Texas for $15 an acre. Benoit immediately brought the letter to Scharff, who, in the language of Benoit:

> . . . "Got mad. He said: 'What land?' I said: 'My land and your land.' He said: 'You got no land.' I said: 'I did not know that; I thought I got interest in the land, the way I understand when we made the deal.' He said: 'Anybody come to buy that land send him to me; that is my land; I never buy land for nobody else but me.' I said: 'All right, Mr. Scharff.' 'Well,' I said, 'that note, I got to pay you that?' He said: 'No; you want that?' I said: 'Yes; if you want to give it to me.' He just went in his safe or some bureau; he got the note and . . . . me the note" (Tr., p. 40).

Benoit testified that some time after the circumstances just related, Scharff wanted him to buy his cattle, and, on being informed that he (Benoit) had no money, Scharff said:

> "I will let you have it on your land, the same way I let you have that money" he said. "I got to buy that land with you some day, anyway."

And, in answer to a request by the court to repeat his testimony, Benoit restated his previous answer in the following words:

> "I got to buy that land with you, pay you for the land, some day, anyway."

And Benoit replied:

> "If that's the way you want to sell, I might buy."

He then looked at the cattle and bought about $400 worth that day. Benoit says he received from Scharff, on another occasion, cattle valued at about $800, with the understanding that it was to go on the land; and that this was about three years after he had been adjudged a bankrupt (Tr., pp. 40-41).

Before the transfer, Benoit consulted Judge Gorham, his attorney in Lake Charles, and informed him of the proposed transaction with Scharff. Judge Gorham asked if Scharff was to execute a counter letter, and upon being informed that he was not, Benoit was advised not to transfer the property. He said that the judge told him:

> "You put your hands in a lion's mouth. He is going to bite you" (Tr., p. 42).

The real nature of the transaction is fully revealed in the last part of Benoit's examination in chief, when he said, in substance, that he had turned over all of the property owned by him to the bankrupt court, with the exception of the land in Texas, which he transferred to Scharff, in order to give him a chance to pay his debts; that he did so because Scharff had agreed that when the land was sold he would return the $6,000 previously paid thereon by him, Benoit, and divide the profits; and he could then pay his debts; that he had paid his debts all his life; and when he had moved to

Welsh from the country he was worth $22,000. That Scharff paid nothing on the property when transferred to him; and but eight or nine hundred dollars in cattle transferred by him to Benoit, and $200 in money, long after the execution of the deed.

Scharff's version of the transaction, relating to the acquisition of the land, is as follows:

> "I was to purchase the land from Mr. Benoit, but that Mr. Labit would sell to Mr. Benoit his half interest in the hand if I was to pay to Mr. Labit the amount of money that he had paid in interest and taxes. There wasn't anything further said about the deal at that time, that I remember" (Tr., p. 90).

We invite the attention of the court to the fact that the Labit Brothers reconveyed to Benoit on May 2, 1904, the same day, and evidently just prior to the execution of the deed from Benoit to Scharff; and that the amount of money paid by the Labit Brothers in interest and taxes, on the property, $543.35, was represented by Benoit's note to them.

In answer to the question, "What was the nature of the proposition made by Benoit to you?" Scharff said:

> "He wanted me to buy that tract of land, I should assume all the liabilities existing against it and to divide with him the profits if there were any" (Tr., p. 91).

And his reply to Benoit, was:

> "That I could not purchase any land in Texas, that I had some already, and that the time was not proper for me to buy any. I then said to him that if he should hold on to that land that the time would come when it would be good property" (Tr., p. 91).

In answer to the direct question, whether at the time Benoit executed the transfer, there was any verbal

agreement between them, that Benoit was to receive one-half of the profits, he said there was not. But, he testified that at the time he acquired the property Benoit was very downhearted, and so expressed himself; that he had lost all the money he had invested in the land, and, he thought, for his own good, he had been too sympathetic, when he said to him:

> "Never mind, Benoit, if I come out all right on this deal and I make a good profit, I will recompense you.' "—"and I did that" (Tr., p. 91).
>
> "Q. Did you state to him what amount you would recompense him?
>
> "A. There was no amount mentioned because I would not then know how much I would do for Mr. Benoit, because I could not tell at that time, land was so low, if they ever enhanced sufficient in value to make a good profit; consequently I could not tell Mr. Benoit what I would do for him" (Tr., p. 91).

He further said:

> "There was no percentage of profit talked about because I would not have submitted to it at that time. To give any of my profit in such a way as I decided to give it, and that would be no more than a charitable donation" (Tr., p. 91).

In answer to the question whether he had made Mr. Benoit any promise or proposition prior to the time he acquired the land, Scharff said:

> "There was no occasion to do that, because I did not intend to buy the land. I did not want it at that time, and I only bought it afterwards because lands was so low that I thought they could not remain so low long, they had to enhance in value, and I had confidence in Texas lands. I had some spare money at that time that I could invest" (Tr., p. 92).

Before consummating the deal he made inquiries as to the market value of the land, over the long distance

'phone, and was informed by a real estate dealer in Texas, that, although lands were not then high, they would enhance in value, and that if Scharff did purchase the Benoit property he thought he could sell it in the future with a profit. He denied that he had ever agreed to refund Benoit his payment upon the property and give him one-half of the profit (Tr., p. 92).

Scharff further testified that he did not assume any of the indebtedness assumed by Benoit, other than that stated in the deed; that it would have been foolish for any one to have done so; that he was asked to settle the claim of the bank, but refused; that at the time of the execution of the deed he paid a check to Mr. Labit for $543.35 (Tr., pp. 92-93).

Scharff denied that he knew that Benoit was insolvent at the time he purchased the land. He admitted that Benoit told him he wanted to pay his indebtedness, and that he informed Benoit, in a joking way, "I expect that is easy to do" (Tr., p. 94).

Scharff stated that one day he was approached by Benoit, who told him that his house was not fit for his family to live in and needed repairs and that he had no money, and that he loaned him $200 for which he accepted Benoit's note. He further stated that Benoit approached him on one occasion after the bankruptcy and desired to enter into the butcher business and wanted to buy cattle, but had no money, and Scharff told him:

> "Well, Benoit, some day I come out ahead of this land, I just feel, and I sell you these cattle, and if you can not pay me you pay me as much as you can on it, but if you can not repay me, it won't matter much anyway" (Tr., pp. 95-96).

On that occasion Scharff sold to Benoit, according to his statement, about $675 worth of cattle. He admitted, on the trial, that the land was worth $15 an acre cash $24,000 for the 1,600-acre tract (Tr., pp. 103-104).

Scharff was the owner of the land at the time of the trial.

The following questions and answers are instructive as to Scharff's views of the situation:

> "Q. Now, was it a good business proposition for Mr. Benoit, after having paid over $6,000 on that land, to deed it to you for nothing?
>
> A. He would have eventually lost the land just the same if he hadn't paid for it.
>
> Q. Then, as a matter of fact, Mr. Scharff, Mr. Benoit had paid very nearly the same on the land as you did?
>
> A. That's unfortunate for Mr. Benoit.
>
> Q. Was that a good business proposition for him to turn that over to you for nothing?
>
> A. I don't think it was a good business proposition. It was not a very good business proposition for me to buy it, but I did on speculation" (Tr., pp. 109-110).

Mr. L. E. Robinson testified that he examined the land in Matagorda County, Texas, formerly owned by Cleopha Benoit, and that in the spring of 1904 he had a conversation with Benoit, with reference thereto, which was related by him as follows:

> "Cleopha Benoit had some time previous to that bought this land. Still some time previous to this he had sold a half interest in this to the Labit Brothers; one of the Labits lived in Welsh. Mr. Benoit was in business, small business, and the Labit Brothers were in the lumber business. Both parties became somewhat embarrassed financially, and the Labits were unable to meet their payment which they had assumed on the land, and Benoit was unable to make the payment. He came to me, as he said, to help him out. I had previously helped him out some years before that when he was owner of about 600 acres on Bayou Chene, and a number of his creditors were about to commence suits, and I had made a loan for him and taken up the smaller claims, and in that

way enabled him to hold all his property which he sold for about $25,000. This money he had lost in business in Welsh and was getting hard up. I told him that if I could go and look at the land, and if it suited me, I would make him a proposition. I made the trip over there, examined the land and came back home and made him a proposition. I offered to assume the mortgage indebtedness against his 1,600 acres, which then amounted to a little more than perhaps $6,000, and to give him in exchange about 400 acres of my land on Bayou Chene, Calcasieu Parish, rating my land at $30 an acre and taking his land in on the basis of $10 an acre. He would then owe me a balance of $2,000 or $2,200, or in that neighborhood, for which I offered him very favorable terms. I do not remember, but I think it was about $500 a year. He thought very favorable of the proposition, and at his suggestion we came over here to Lake Charles one evening and consulted with his attorney, Mr. Gorham. Mr. Gorham advised him to make the trade. We went back to Welsh, and a few days later than that I asked him when we would close up and he told me he was figuring with another party that he thought more favorable, and a few days later than that he told me that Mr. Scharff had made him a proposition that he considered more favorable. I asked him what the proposition was, and he told me that Mr. Scharff was to take a deed to the property and was to hold it and when the land was sold Mr. Scharff was to receive payment back for the account which he had . . . . to pay on the land and whatever it sold for the balance was to be divided between them. So my trade with Benoit dropped" (Tr., pp. 53-54).

This proposition was made by Robinson to Benoit two weeks before the transfer to Scharff.

ARGUMENT.

The several errors assigned present but a single question for decision by the court, and that is: Did the Supreme Court of Louisiana correctly construe and apply the limitation provision of the bankruptcy act to the facts as they appeared in the record before it?

An analysis of the testimony as to the relations of the parties, and the acts leading up to and connected with the sale by Benoit to Scharff, fixes in the mind the firm conviction that the transaction was fraudulent, from its inception to its execution. As stated heretofore the lower court so held, and the Supreme Court of Louisiana evidently had no doubt on that point. Benoit, the subsequent bankrupt, is an illiterate man, who had been for some time conducting a small mercantile business. He found himself unable to pay his debts and pressed by his creditors. He owned 1,600 acres of land in the State of Texas, that he had purchased three years before for $12,000, and had paid thereon more than $6,000. In his anxiety and financial distress he called on his friend, Scharff, the defendant, and informed him that he was going to lose everything that he had; and that he only had his land in Texas, for which he was certain he could not pay. Scharff was sympathetic and said that "it was too bad." In a few days Scharff called Benoit to come to him, with the final result that Benoit's ownership of the property was transferred to Scharff, without the payment of one cent therefor, and with the assumption only of the four vendor's lien notes affecting the property, aggregating $5,600, and the note executed by Benoit to Ward for $500.

At the time the subject of the transfer was first broached, the Labit Brothers were the record owners of a half interest, by purchase from Benoit, for which they had not paid. Neither the Labit Brothers, who had assumed the payment, in their purchase from Benoit, of

the vendor's lien notes affecting the property, or Benoit, were in a position to meet these obligations. Scharff, who was anxious to get this property, required that Benoit should be reinvested with the sole ownership, by retrocession from the Labit Brothers, and that the property should then be placed in his name.

The nature of the transaction is made clear and plain when one reads Benoit's and Scharff's testimony, which agrees on the main points. Benoit was to deed the entire 1,600 acres to Scharff, who was to pay off the mortgage notes affecting the same, amounting to $5,600, plus the $543.35, the amount of the note executed by Benoit to Labit Brothers, and then they were to divide the profits equally. Scharff was to have all the time that he needed in which to dispose of the land. There was never an actual sale from Benoit to Scharff, but the title was merely placed in Scharff's name, so that Benoit would not surrender the same for the benefit of his creditors, and thereafter obtain the reimbursement of his funds and such profit as might result from the sale of the property. Scharff was fully apprised of Benoit's financial conditions at the time. Benoit specifically communicated this fact to him and all the circumstances unerringly point to the conclusion that Benoit in his testimony related the facts as they actually occurred.

Scharff subsequently gave Benoit $200, and went through the form of requiring his note for the amount. But the note was returned to Benoit without payment. Scharff also sold Benoit about eight hundred dollars worth of cattle for which he received only a small sum in payment at the time. Scharff admitted that he had never been upon the land before his purchase.

It is not reasonable to maintain that Benoit would have placed this property in Scharff's name, under the conditions testified to by Scharff, in view of the fact that Mr. Robinson offered to pay his indebtedness on the

property in Texas and deed him 400 acres of good rice land near his hom in Welsh, worth, at that time, $12,000, and to give Benoit time to take care of the balance due on the transaction. The inference is unanswerable, that the reason why this proposition was not accepted by Benoit was because he would have been compelled to turn over the land acquired, in exchange, for the benefit of his creditors, and he preferred to place his Texas property in Scharff's name, with the hope that it would subsequently be disposed of at a good price; and that he would thus realize handsomely on his investment, and, at the same time, be discharged of his debts in Louisiana, through the medium of the bankruptcy court.

Scharff admits that he had promised Benoit that if he did well enough on the land, he would remember him, and he propounded the question to the attorney:

> "Haven't I a right to donate to any man, when I think him in need of some money to help him" (Tr., p. 105).

Scharff's benevolence has been extremely profitable to him. He testified that the land was worth $24,000. His total investment in the property aggregates $7,000. His margin, therefore, is $17,000, and we take it that the mortgage lien notes were probably purchased by him at a discount, as he admits in his testimony that he purchased the $500 note from Ward at a good discount.

The transaction sought to be set aside by the trustee, was not only fraudulent, but the transfer vested no title whatever in Scharff. It was the attempted creation of a partnership through the medium of an act of sale for the purpose of placing the property where it could not be reached by Benoit's creditors. As usual in such cases, the biter was bitten, and when Benoit came with a letter from Fauroux, showing that the land could be sold for $24,000, Scharff said, "you have no land, and I will attend

to my own business." In other words, the sagacious prediction of Benoit's counsel, Judge Gorham, that if he transferred the property to Scharff without taking a counter letter, he would place his hand in the lion's mouth and be bitten, was verified.

Summarizing the evidence on the question of fraud and of laches, we believe that the record justifies the assertion that the following facts are established:

1. That Benoit was insolvent to the knowledge of Scharff when the transfer was made, thirty days before the filing of the petition in bankruptcy. No money or other thing of value was paid by Scharff to Benoit at that time. The entire amount received by Benoit from Scharff, including $200 in cash, and eight or nine hundred dollars in cattle, approximates $1,100. The land was worth $10,000 at the time of the transfer to Scharff, and Benoit had been offered this amount by Robinson, in the proposed exchange of property in Louisiana for that in Texas.

2. That the trustee acted with diligence in closing the estate and in placing the matter of the sale by Benoit to Scharff in the hands of his attorney for investigation That the investigation made by the attorney extended solely to the ascertainment of the incumbrances affecting the property; and that, neither actual nor constructive fraud on the part of Benoit and Scharff was brought to the knowledge of the trustee, or his attorney; that the suit was not filed during the first administration of the trustee, because of the fact that he had been advised by his attorney that there would be no equity remaining for the creditors, after satisfying the mortgages affecting the property.

We submit that the transfer from Benoit to Scharff, of date May 2, 1901, was a fraudulent simulation, as a sale, and that no title passed and no rights of property were thereby acquired by Scharff. This fact, being then con-

ceded, for the purpose of this argument, did the limitation of two years under the bankruptcy act, begin to run from the date that the bankruptcy was closed and the trustee discharged, or from the date of the discovery of the fraud.

The Supreme Court of Louisiana, in maintaining the plea of prescription, held that the trustee had, or might readily have had, all of the evidence that had been produced in the case, save perhaps the positive and direct testimony of the bankrupt, Benoit, to the fraud; a portion of the testimony of the trustee and of Judge Overton, his attorney, is then quoted to support the judgment (Tr., pp. 210-214).

With all due respect to the Supreme Court of Louisiana, the testimony quoted in its opinion, as a reason for maintaining the statute of limitations, warrants only the opposite conclusion.

We quote all of the material testimony of the trustee, and of his attorney, Judge Winston Overton, to show that the court erred in holding that the trustee was guilty of laches in not discovering the fraud before the settlement of his account and his discharge.

Testimony of James A. Kinder.

"Q. Did you cause him to make any investigation relative to the disposition of the land which Benoit had made in Texas?

A. We made an investigation. We could not get anything at this end of the route, only a little surmise that such a thing had been done. We could get nothing definite and at the time I got a rumor that there was such a thing that had occurred, and it was late in the proceedings the proceedings had been going on some time, I don't know how long, and I told my attorney what I had heard and he started an investigation which he continued for some time. I don't remember how long. It was a good while ago, and he spent some

$25 or $30, and finally he reported to me that the investigation did not amount to anything; that he could not get anything tangible, *and that he did not believe there was an equity in it for the estate at that time*.

Q. Mr. Kinder, what is it you heard about his selling land in Texas that caused you to make that investigation?

A. Somebody, I don't remember who it was, asked me if Benoit turned in that land that he had in Texas. I don't remember who it was, and I examined the schedule and I saw there was nothing with reference to lands in Texas. (All that is vague in my mind.) Whoever it was probably told me what county it was in and we started without any information in regard to it, and I turned the matter over to my attorney, and he made the investigation and advised me it wasn't worth while to—

Q. Did you ask Mr. Benoit anything about it?

A. No; I never asked Mr. Benoit anything about it that I remember of.

Q. After you found out that it was sold to Mr. Scharff did you ask him about it?

A. No, sir.

Q. Are you acquainted with Mr. Scharff?

A. Yes, sir.

Q. Have known him in the neighborhood of twenty years?

A. In that neighborhood.

Q. Did you ever ask Mr. Martin, the notary before whom the deed was passed?

A. I never found out who passed the deed. I never was able to ascertain anything at this end of the line; everything was shut out.

Q. You could have easily found in the records of Matagorda County the name of the notary before whom the deed was passed?

A. I supposed that my attorney would attend to that.

Q. Mr. Kinder, was there anything about the Benoit bankruptcy which aroused your suspicion at all that there had been fraud committed?

A. Nothing except that land.

Q. You say that land; you mean the Texas land?

A. I mean the Texas land. Well, there was some other things too. I will say that there were other things we inquired into. There was a sale of some stock down there and we had a hearing or two before Judge Taylor in regard to stock that Mr. Benoit had sold, and we had one or two hearings before General Taylor and the investigation proved that Mr. Benoit had sold the stock for his son.

Q. So, then, if I understand you correctly, at that time you had a suspicion in your mind that there was something of a fraudulent nature regarding the sale of this Texas land?

A. All I could get was a little hint of this thing. I could not find a man in Welsh who would tell me anything about it.

Q. Mr. Kinder, you never had Mr. Scharff nor Mr. Martin, nor Mr. Welsh, nor Mr. Benoit summoned before the referee in bankruptcy and asked them about this land prior to the time when you were discharged as trustee in the original appointment?

A. I did not know that Mr. Martin or Welsh knew anything about it.

Q. Did you have either one of these that I have mentioned summoned before the referee and interrogate them?

A. No, sir; not at that time, for this reason, that it seemed like one big community and they were all friends and would not tell anything about it. I don't remember the individuals, who they were, but I questioned parties around Welsh and they would give me some evasive answer and walk off. I turned the matter over to my attorney and we kept it up until he said it was useless to spend any more money on an uncertainty. He said there might be an equity in it for the creditors and there might not. He said it was not worth while to spend any more money.

Q. The estate was very small?

A. Yes, sir; the estate was very small, but there was very little goods in the store then.

Q. There was very little money to be spent in useless investigation?

A. There was no money to spend.

Q. When was it the first that you ascertained positively that this sale had been made as alleged by you in this petition?

A. When I ascertained that positively, I think, it was since the case was reopened. Yes, positively since the case was reopened.

Q. Was it at the examination of these witnesses?

A. At the examination of Martin and Benoit and somebody else.

Q. Gorham and Robinson?

A. Yes, sir.

Q. As soon as you found out or had sufficient reason to think that you had the evidence to prosecute this case did you make application to Judge Boarman to have this matter reopened?

A. Yes, sir.

Q. And you stated you were acting at the advice of your attorney when you ceased the original investigation?

A. Yes, sir; I would spend all there was in it, if it had been me, but he was the lawyer."

Testimony of Winston Overton.

"Q. Judge, after receiving these letters what did you do?

A. I considered the matter and under all of the circumstances that were before me at the time I felt that there would be no equity in the event we instituted suit and succeeded with the suit; that is to say, no equity in the land after the sale at forced sale for the creditors. Then I took the letters and went over to Gen. Taylor's office, he was then referee in bankruptcy, and I made a verbal report to him and filed these letters with it as part of my report and took no further steps in the matter.

Q. Explain why there would be no equity if the land was sold at forced sale?

A. In favor of the creditors.

Q. Yes, sir?

A. That was simply my conclusion; in other words, at that time I was under the impression or belief that lands were deteriorating in value, and if I mistake not it was on account of the crop conditions.

Q. On account of what?

A. Crop conditions. Furthermore, I knew that then or felt that there would be considerable litigation in recovering the land. I saw that there were mortgages on the land which I believed to be good mortgages, and I thought that after the expense of the litigation were paid and after the land was sold at forced sale and the mortgage indebtedness paid, which I thought to be a valid indebtedness, that there would be little or nothing for the creditors; in other words, that it was scarcely worth while to make the attack. I got no further than that.

Q. When you were investigating this matter, was it upon any information which you received or any charge that there was fraud, or sale within the four months?

A. I will say that I did not go very far into that; that from the surrounding circumstances that my impression was that at the time that the sale was susceptible to attack; in other words, the surrounding circumstances led me to believe that in the event that there would be sufficient ground, that it would be my duty as attorney to ascertain whether or not the evidence could be produced that would set the sale aside. In other words, it looked to me on the surface as if it was susceptible of attack. Of course, I may have been in error in this conclusion.

Q. I want to ascertain whether or not at the time you was investigating the matter it you had any evidence before you to lead you to conclude that it was not a bona fide sale?

A. My impression was that it was a simulated sale. I had no evidence. My impression was simply that it was a simulation sale gathered

from surrounding circumstances. I don't recall of ever having thought it was made as security for indebtedness.

Q. You had no intimation, or had you any intimation or information as to whether this was a transfer with the intention of giving a preference from Benoit to Scharff?

A. None.

Q. Then you had no knowledge of any fraud of that kind committed?

A. I had no knowledge of it. In fact, to state it clearly, when I found out the existence of this mortgage on the land that were stated in the letter written me from Texas, and concerning which I was questioned by Mr. McCoy, I dropped the matter without investigating to find whether fraud existed in reality, or whether or not I could set it aside. My impression simply being that it was susceptible to attack; in other words, the attorney, under the circumstances, was to advise the trustee whether or not the evidence could be obtained to set aside the transfer.

Q. There is a plea of prescription and there is a charge of fraud in this transfer; now the question what I want to ascertain from you is whether you had any such knowledge communicated to the referee, such knowledge of the transaction as would be to the knowledge of the referee at that time, of value?

A. I will answer that as plainly as I possibly can. I made an investigation to learn whether there was not fraud in the transaction. I felt that it was susceptible of attack, and I felt this largely because Mr. Benoit and Mr. Scharff resided in the parish of Calcasieu, and the land was situated in Texas, and the consideration seemed to be large, and I doubted whether or not Mr. Scharff would buy land costing as much as that seemed to cost, situated in the State of Texas, and especially as I did not know at that time or before that Mr. Scharff was a man of considerable means, though I knew he was a man of ordinary means, or at least believed so. In other words, I thought

he would keep his money over here, instead of going to Texas with it under the circumstances. I gave my impression to Gen. Taylor, and while I thought probably the sale was susceptible to attack because of the surrounding circumstances, yet I did not feel as it the creditors were gaining anything by it even should we succeed in setting it aside.

Q. Then at the time you did not have the knowledge of sufficient evidence to have it set aside?

A. No, sir; I did not have sufficient evidence to set it aside at that time. In other words, if this mortgage had not existed on the land I would have asked the trustee to make investigations and find out whether or not the evidence could be had upon which my suspicions could be verified, or, in other words, proved to be correct and well founded.

Q. Judge, do you know Mr. Lee Robinson of Welsh?

A. Yes; I know Mr. Lee Robinson of Welsh.

Q. Now, Mr. Robinson testified here yesterday that he had offered to trade Benoit 400 acres of Calcasieu land, worth at that time $30 an acre, in exchange for the Texas land, and that he considered and did offer Benoit $10 an acre for his Texas land in exchange and that he would assume the unpaid balance that Benoit was owing on the land, that would have given Benoit 400 acres of Calcasieu land, which Mr. Robinson testified was worth $30 an acre, upon which there would have been only $2,000 balance due, had (Benoit) Mr. Robinson had these 400 acres of land in Calcasieu Parish with only $2,000 indebtedness against it, wouldn't you have proceeded against that property?

A. Had I thought or known that the land in Texas was of that value I would have advised the trustee to look further into the matter and see if the evidence could not have been procured that would justify the filing of the suit to set aside the transfer to Scharff.

Q. The trustee, Mr. Kinder, acted under your advice and instructions in this matter?

A. To the best of my knowledge he did in all respects.

Q. Judge, if your investigations as to the value of the land had led you to believe that there was much less equity in it than stated in the question asked you by the attorney for the plaintiff, you also would advise suit instituted or investigations instituted relative to the character of the transactions, would you not?

A. I would; provided, of course, that there would have been, in my opinion, a sufficient equity to have been a benefit to the creditors.

Q. In giving your opinion, you treated the vendor's lien, which at that time was $6,000, as being so great as to leave no equity worth contending for?

A. Yes, sir; I have reference to the vendor's lien and the mortgages stated in the letter from the attorneys, and I forgot now the consideration and the deed from Benoit to Scharff was stated to be, but according to my recollection, there wasn't very much difference. As a matter of course, though, whether it was a simulation or not, the price stated in the deed was considered by the parties as the fair valuation of the land at the time and it was the best information I had on that subject. I have an idea that there was another letter from the firm of Wilson & Wilson which stated that they did not know the land and they could not tell me the value of it, but this is a mere impression and I would not testify to it positively as a fact.

Q. Then your investigation was simply to ascertain whether the land was worth sufficiently more than the price stated in the deed to Scharff to justify the bankrupt court in instituting suit?

A. Yes, that was the first step I took, and when I reached the conclusion that there was no equity, or a very small equity for the creditors why I dropped the matter without going any

further. My attention, I believe, was called to the transaction by the trustee, Judge Kinder, and it was because of such suggestion that I took it up."

This testimony, taken and considered in connection with the other record facts, clearly negatives the conclusion reached by the Supreme Court as to laches.

The land being situate in Montgomery County, Texas, the deeds were there recorded. *Benoit had not carried the land on his schedule of assets.* Selcraig, although a creditor and holding Benoit's note to C. C. Ward, for $500, had not appeared and proved his claim. The bankruptcy was under administration from June, 1901, to June, 1905, when the trustee filed his final account and was discharged. He swears that he had been vigilant in the discharge of his duties. He called the attention of the court to and emphasized the fact that out of assets surrendered by the bankrupt exceeding $8,000, he had been able to collect only $111. The record shows that soon after his appointment, with the authority of the court, he employed Judge Overton as his attorney, and that immediately upon receiving a hint that Benoit had transferred his Spanish Fork land he directed his attorney to make an investigation. The bankruptcy had then been in course of administration for some time. His attorney spent $25 to $30 in making the investigation and loyally reported that it did not amount to anything; that he could get nothing tangible, and that he did not believe there was any equity in it for the estate, at that time. There was nothing about the bankruptcy which aroused his suspicion that a fraud had been committed, except the transfer of the land. The balance of his testimony is negative, that is, the effect that he did not ask certain persons named in the questions what they knew about it, nor for the reason that the matter had been turned over to his attorney. He did not know that

Scharff had bought the land until informed by his attorney. He did not have Mr. Marvin or Mr. Weld summoned before the referee; he did not know that they had any knowledge with reference to the matter; and the final report of his attorney, that there might be an equity in it for the creditors, and there might not, and that it was not worth while to spend any more money, was the reason why suit had not been instituted.

Weighing this testimony, as a whole, it establishes but one single fact—that the question of fraud was never inquired into by Mr. Overton, his attorney, but that when he ascertained the land was burdened with four notes of $1,000 each he arrived at the conclusion that there would be no equity in the property for the creditors in the event of recovery.

We consider that the leading case on the question as to the application of the bar of the statute of limitations in the bankruptcy law, is Bailey *vs.* Glover, reported in 21 Wallace, pages 342-350.

In that case the court had before it, for construction, the limitation provision of the bankruptcy act of 1867, which was a literal transcript of a similar provision of the bankruptcy act of 1841. This provision embraced, in terms, actions at law or in equity.

Bailey, the assignee, brought suit to set aside certain fraudulent and void conveyances of real estate by the bankrupt to the defendants. They demurred to the bill, based upon the statute, that the suit had not been brought within two years from the appointment of the assignee. The demurrer was sustained, and this court, in construing the provision, said:

> "This is a statute of limitations. It is precisely like other statutes of limitations, and applies to all judicial contests between the assignee and other persons touching the property or rights of property of the bankrupt transferable to or

vested in the ... are ... two years from the ... action accrued, ...

After ... of the law, ... purpose being ... element of ... policy of ... incident to ...

relief, provided suit is brought within the proper time after the discovery of the fraud.

"We also think that, in suits in equity, the decided weight of authority is in favor of the proposition that where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party.

The court then proceeded to say that there was a conflict of authority on the question whether in actions at law, the same principle was applicable, some courts holding that the rule was confined to courts of equity only, and others that it was equally applicable to cases at law. The court then said:

"As the case before us is a suit in equity, and as the bill contains a distinct allegation that the defendants kept secret from the plaintiffs and the parties interested the fraud which is sought to be redressed, we might rest this case on what we have said is the undisputed doctrine of the courts of equity, but for the peculiar language of the statute we are considering. We can not say in regard to this act of limitation, that courts of equity are not bound by it, because the very words are that 'no suit in equity shall in any case be maintained . . . unless brought within two years, etc.' It appears clear that this statute must be held to apply equally to its own force to courts of equity and to courts of law, and if there be an exception to the universality of its language it must be one which applies under the same state of facts to courts of law as well as to suits in equity.

"But we are of opinion, as already stated,

that the weight of judicial authority, both in this country and in England, is in favor of the application of the rule to suits at law as well as in equity. And we are also of opinion that this is founded in a sound and philosophical view of the principles of the statutes of limitation. They were enacted to prevent frauds; to prevent parties from asserting rights after the lapse of time had destroyed or impaired the evidence which would show that such rights never existed, or had been satisfied, transferred, or extinguished, if they ever did exist. To hold that by concealing a fraud, or by committing a fraud in a manner that it remained undiscovered until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud, the means by which it is made successful and secure. And we see no reason why the principle should not be as applicable to suits in equity as to the common law side of the court, and indeed it is often cited on the equity side.

While we must follow the construction of the Statute of Limitations in this matter, where those statutes are controlling, in construing this Statute of Limitations enacted by the Congress of the United States in the law of bankruptcy, we hold that where there has been no negligence on the part of a plaintiff in coming into court to set up the fraud which is the foundation of his suit, and when the fraud has been concealed in such a manner as to conceal it from the plaintiff, he does not begin to run until the fraud is discovered by, or becomes known to the party suing or those in privity with him.

The principles announced in Bailey *vs.* Glover as controlling in the construction of the Statute of Limitations, in the bankruptcy act, were affirmed and adopted in Tracy *vs.* Clews, 115 U. S., pp. 528-542. L. Ed., Book 29, p. 467.

e bill showed laches, in that the plaintiff did not exer-
e due diligence after learning of discovering the fraud.
passing on this point the court held:

"While it is true that a plaintiff must use reasonable diligence to discover fraud, it does not mean that he must necessarily have used some affirmative means or taken some active steps or begun an investigation as he might not have the slightest suspicion of the existence of the fraud. The rule of diligence only means that the defrauded party's ignorance must not be negligent and that he remains ignorant without fault of his own. This necessarily follows from the undoubted rule that a party defrauded is not affected by the lapse of time or by anything done or omitted to be done so long as he remains, without any fault of his own, in ignorance of the fraud that has been committed."

Board of Levee Commissioners vs. Tensas Delta Land Co., 204 Fed. Rep., p. 745.

In the instant case the suit was brought by the trustee, his representative capacity for the benefit of the
ditors. We take it to be sound in principle that the
e does not exercise upon him the same alertness and
erest in protecting the trust as in the case of a private
rson looking after his own personal affairs.
We quote from the same case referred to:

"This suit is not to be treated altogether like a suit between private parties. The plaintiff is a public corporation, charged with the management and sale of [illegible] lands. It is not presumed that it could exercise under the circumstances the same degree of diligence in guarding against fraud as a private owner of real estate. U. S. vs. Minor, 114 U. S. 233-240, 5 Sup. Ct. Rep., 836, 29 L. Ed. 110. Unless the plaintiff's want of diligence is such as to clearly bar its right of action the court should be reluctant to deprive it of relief on that ground, in view of the

> fact that the suit is by a plaintiff acting in a fiduciary capacity and suing for the benefit of the public before the rights of any third party has attached which it is necessary to imperil by the suit. A defendant who has committed a fraud involving the corruption of persons occupying a place of trust, should not be permitted to profit by it on account of the negligence of the plaintiff, unless the rules of the court and the rules of equity inexorably require it."

In Rock Island Plow Company vs. Reardon, reported in 222 U. S. Rep., pp. 351-354, L. Ed., 56, p. 231, this court rather indicates that it is a question whether the rights of creditors in existence at the time the petition in bankruptcy is filed, can be subsequently destroyed or lost by the laches of the trustee.

We further suggest to the court that the fraud of Scharff and Benoit was an active and continuing one up to the date that Benoit informed the attorney of the trustee, L. V. Goudeau, of it, some time in 1908. There was nothing suggestive of fraud upon the face of the deed. It was stated that $7,200 had been paid, or secured to be paid. The property was located in another State. Nothing was paid by Scharff to Benoit on the property at the time of the sale and he let Benoit have $200 some months after the adjudication in bankruptcy, and eight or nine hundred dollars about three years later. Benoit made no mention of the fact that he had transferred the property to Scharff or had retained an interest in the land in his petition in bankruptcy. There was no change in their conditions or relations, save to make the rescission of the sale inequitable.

This court held, in Gilbert vs. Cobbs, 175 U. S., p. 368, that:

> "Laches is not like limitation, a mere matter of time but principally a question of the inequity

of permitting the claim to be enforced, an inequity founded upon some change in the condition or relations of the property or the parties."

Also, in 179 U. S., p. 19, that:

"Laches as a defense in case of an active and continuing fraud must amount to assent or acquiescence."

45 L. Ed., p. 60.

We further submit that the views expressed by the preme Judicial Court of Massachusetts, in Bilafsky Arbaham, reported in 67 N. E. Rep., p. 318, strongly pport the position of plaintiff that the bar of the tute does not apply.

n the Massachusetts case the suit was brought the trustee in bankruptcy to recover property claimed belong to the bankrupt estate. The estate had been sed for more than two years before it was reopened for her administration, upon the application of the litors, in which it was averred that there remained he bankruptcy, uncollected and undischarged, certain ms against persons of good pecuniary responsibility. e court, among other things, said:

"It is now contended by the defendant that section 11, clause d, of this statute, is a bar to the suit, because it provides that 'suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.' The question is whether this provision is applicable to an estate which has been closed, under a misapprehension of the facts, before it was fully administered, and then reopened when that fact was subsequently made to appear. So far as we are aware, this question was never considered by any court prior to the time when it arose in this case. Presumably it was passed upon by the referee in bankruptcy, for the only ground stated in the petition for reopening the

estate was the existence of these claims, which could be enforced only by a suit. The estate can be reopened only when it appears that it was closed before being fully administered; that is closed under a mistake of fact. The reopening of an estate is an adjudication that the closing of it was an error which ought to be corrected, and when it is reopened it is for the purpose of having further administration of it. This further administration naturally involves the collection of assets by suits, if necessary. There is no limitation in the statute as to the time within which an estate may be reopened, and it hardly can be contended that such a proceeding can not be taken after the expiration of two years from the erroneous closing of it. If an estate may be reopened after the expiration of two years, it would be a strange anomaly if the collection of assets by suit, which in many cases would be the principal object of reopening an estate, should be prohibited by the statute. It seems to us that the word 'closed' in this provision means properly and finally closed, and if, upon proceedings in the court of bankruptcy, it appears that the order closing the estate was made under a mistake, and that an order should be entered reopening the estate for the purpose of having it further administered, it should be held, after the reopening that the estate is open for the purpose of bringing suits, even though more than two years have elapsed since the entry of the original erroneous order. In this way, we think, effect will best be given to the purpose of the Congress to provide for a full and proper administration of the estates of bankrupts."

In commenting upon "Limitation on Suits by Trustees," a leading authority has said: "It has been held that where an estate is declared closed, *but is subsequently reopened*, the two-year period begins to run from the *subsequent closing of the estate*." * * * Bilatsky *vs.*

raham, 183 Mass., 401, 67 N. E. 318." Collier on kruptcy, 8 ed. p. 125 and note 123.

We have referred to the decision of the Massachusetts preme Judicial Court, because the facts in the case ore it were analogous to this case.

Paragraph E, section 67, of the bankruptcy act of y 1, 1898, U. S. Comp. Stats., 1901, p. 3411, as amended act of February 5, 1903, chapter 487, 32 Stats., 799; S. Comp. Stats. Supp., 1909, p. 1311, strikes with lity all fraudulent transfers made by the bankrupt hin four months prior to the filing of petition.

Our contention is that Schaff acquired no title or nership of the property transferred to him by Benoit, hough he was the ostensible owner, by deed recorded, cause his acquisition of the property was the result a conspiracy between Benoit and himself to defraud creditors and to place the property beyond their ch for the ultimate benefit and profit of the parties ticipating in the fraud.

Therefore, when the bankruptcy was closed and the stee discharged June 28, 1905, the right to institute for the rescission and cancellation of the deed from noit to Schaff then existed in the trustee. The bankcy court had unquestioned jurisdiction, upon proper plication, to reopen the bankruptcy for further adinistration. This was done in this case for the specific rpose of permitting and authorizing the institution suit against Schaff for the recovery of the property onging to the bankruptcy. The petition of Kinder, stee, alleged that the fraudulent nature of the transion was not discovered by him until a short time evious to the filing of the petition. As was well said the Massachusetts case, there is no limitation fixed the statute as to the time when the bankruptcy may reopened. As a matter of fact, the bankrupt estate Benoit was under administration from June 4, 1904,

to June 28, 1905, and was reopened October 17, 1908, and suit to set the sale aside was filed January 7, 1909. The bankrupt estate was under actual administration only about fifteen months before this suit was filed. The argument is conclusive, that the bar of the statute, under the facts in this case, has no application whatever.

It is obvious that the Supreme Court of Louisiana in construing the provision of the Federal statute in this case adopted the construction placed upon State statutes of limitation, and did not follow the jurisprudence of this court in the administration by it of rights and remedies granted by Federal statutes.

The lower court of last resort grounded its decision, apparently, upon the case of Wood *vs.* Carpenter, and quoted extenso therefrom. A mere reference to this decision shows that the statute under consideration in that case was local, and that the adjudications of the Supreme Court of Indiana were accepted as decisive of the question in that cause.

The Supreme Court of Louisiana, after quoting from Wood *vs.* Carpenter, proceeds further to say:

> ". . . The doctrine in these cases has been fully adopted by this court."

And several State decisions are cited, which all relate to the construction placed on local statutes by the State appellate tribunals.

It is well settled that it is only in the absence of legislation upon the subject that the statutes of limitation of the several States are recognized and enforced by the courts of the United States, and given effect as interpreted by the State Supreme Court. But, on the other hand, Federal statutes must be interpreted by the Federal courts, independently of local consideration.

> Calhoun Gold Mining Co. *vs.* Ajax Gold Mining Co., 182 U. S., 499, 21 Sup. Ct. Rep., 885, L. Ed., Book 45, p. 1200.

The learned tribunal whose judgment is sought to be reversed, misconstrued the Federal statute submitted for its interpretation, and was governed by its own rules, interpreting State statutes. Should the decision stand, it would result in the establishment of a different rule than that announced by this court in repeated adjudications, and in injury to the creditors in the bankruptcy.

Conclusions.

In the light of what has now been said this court should not find it difficult to reach the following conclusions:

1. That the primary court in which this case was heard settled by its decree the fact that the conveyance in question was fraudulent, and as such void under the Bankruptcy Act of 1898; that such finding was affirmed by the Supreme Court of Louisiana through its declarations that "while the property now being sued for may have been recoverable for the creditors of the bankrupt estate, on the ground that the sale of it had been made in fraud of their rights, . . . albeit, perhaps, fraudulent and annulable at the suit of the creditors, or of the trustee in bankruptcy, their legal representative." Said Supreme Court affirmed the finding of the primary court *as to fraud* by refusing to reconsider or re-examine it in any form. In its judgment it distinctly states: "*The only defense that need be examined is that of prescription.*" Nothing is more elementary than the rule which prohibits this court, *on a writ of error*, from passing on the facts as ascertained below. It is firmly settled *that the findings of fact made or accepted by the Supreme Court of the State will be made the basis of the decision here.* In Waters-Pierce Oil Co. *vs.* Texas, 212 U. S., 86, it was held that "findings of fact are accepted as conclusive by the Federal Supreme Court on writ of error to State court." *The Supreme Court of Louisiana accepted the finding of*

the primary court as to fraud, and made it the basis of its judgment. So this court must accept that finding as the basis of the judgment to be rendered here.

2. The existence of fraud being thus beyond review here, the first question of Federal law arising is this: Is the rule as laid down by this court, in Bailey *vs.* Glover, 21 Wall., 342, and confirmed by it in Treat *vs.* Clews, 115 U. S., 528, still the law? If so, then the judgment of the Supreme Court of Louisiana must be reversed, because that court refused to accept the rule of Federal law as defined by this court in those cases.

3. The appellate court in question held that: "In this case the estate was *'closed'* on June 28, 1905, and the present suit was filed on January 7, 1909. The prescription period of two years had therefore elapsed before the suit was filed." "It has been held that where an estate is declared closed, *but is subsequently reopened*, the two-year period begins to run from the subsequent closing of the estate. . . . Bilafsky *vs.* Abraham, 183 Mass., 401, 67 N. E., 348." Collier on Bankruptcy, 8th Ed., p. 225, and note 123. If this court accepts that construction as settled by the Supreme Court of Massachusetts and declared to be the law by the leading authority on the subject, then a reversal is inevitable, regardless of all other questions.

We submit that error is manifest and that it should be corrected by reversal of the decree of the Supreme Court of Louisiana, and affirmance of the judgment of the district court.

Respectfully submitted.

A. P. PUJO,
HANNIS TAYLOR,
Counsel for Plaintiff in Error.

L. A. GOUDEAU,
W. B. WILLIAMSON,
Of Counsel.

14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913

NO. 99.

JAMES A. KINDER, TRUSTEE,
Plaintiff in Error.

Versus

EDWARD SCHARFF, ET AL.,
Defendant in Error.

BRIEF

OF DEFENDANT IN ERROR.

CHARLES A. McCOY,
LELAND H. MOSS,
ROBERT L. KNOX,
Counsel for Defendant in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913

NO. 99.

JAMES A. KINDER, TRUSTEE,
Plaintiff in Error.

Versus

EDWARD SCHARFF, ET AL.,
Defendant in Error.

BRIEF
OF DEFENDANT IN ERROR.

CHARLES A. McCOY,
LELAND H. MOSS,
ROBERT L. KNOX,
Counsel for Defendant in Error.

JONES PRINTING COMPANY
LAKE CHARLES, LA.

SYLLABUS.

1. This is a Statute of Limtation. It is precisely like other statutes of limitation and applies to all judicial contests between the assignee and other persons touching the property or rights of property of the bankrupt transferable to or vested in the assignee, where the interests are adverse and have so existed for more than two years from the time when the cause of action accrued, for or against the assignee. Such is almost the language in which the provision is expressed in Section 5057 of the Revised Statutes. Bailey v. Glover, 88 U. S. 342, 22 L. Ed. 638.

2. There must be reasonable diligence and a means of knowledge are the same thing in effect as knowledge itself.
   Wood v. Carpenter, 101 U. S. 135, 25 L. Ed. 809.
   Johnson v. Standard M. Co., 148 U. S. 370, 37 L. Ed. 485.
   Pearsal v. Smith, 149 U. S. 236, 37 L. Ed. 707.
   Kirby v. Lakeshore, etc. 120 U. S. 130, 30 L. Ed. 570.
   Putnam v. New Albany, etc., 83 U. S. 390, 21 L. Ed. 361.
   Johnson v. Atlantic G. & W. I. T. Co. 156 U. S. 648, 39 L. Ed. 556.
   Bates v. Peebles, 151 U. S. 162, 38 L. Ed. 112.
   Foster v. Mansfield, 146 U. S. 88, 36 L. Ed. 811.
   Norris v. Hagan, 136 U. S. 329, 34 L. Ed. 427.

3. Whatever is notice enough to excite attention to a fact and put a party on his guard and call for an inquiry, is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant with it.
Johnson v. Stanard M. Co., 148 U. S. 307, 37 L. Ed. 485.
Succession of Dauphin, 112 La. 139.
Poirier v. Cypress C., 54 Sou. 298.
Citizens Bank v. Jansonne, 120 La. 399.

4. Concealment must be the result of positive acts, mere silence insufficient.
Woods v. Carpenter, 101 U. S. 135, 25 L. Ed. 809.
Felix v. Patrick, 145 U. S. 317, 36 L. Ed. 719.
Pearsal v. Smith, 149 U. S. 236, 37 L. Ed. 707.
Bailey v. Glover, 88 U. S. 243, 22 L. Ed. 638.

STATEMENT OF THE CASE.

This is a suit instituted by the plaintiff in error as Trustee of the bankruptcy of Cleopha Beniot, a resident of Welsh, La., to set aside a sale of 1600 acres of land located in Matagorda County, Texas, from said bankrupt to Edward Scharff, the defendant in error, within a period of four months preceeding Benoit's adjudication as a bankrupt. Among other defenses urged by the defendant in error is a plea of prescription of two years, as provided by paragraph (d) of Sec. 11 of the Bankrupt Act of 1898, which was maintained by the Supreme Court of the State of Louisiana without passing upon any of the other defenses urged by the defendant in error.

From this judgment the plaintiff in error has applied for and obtained a writ of error to this court, filing therewith three assignment of error, appearing in the transcript at pages 222 and 223.

The three assignments of error urged by plaintiff involve only one point, which is fully covered in the first assignment; the last two simply state the same legal question in a little different language,

therefore we will discuss them collectively instead of individually, as the law relative to one applies to all.

We cannot concur with the statement of facts as presented in the brief of the plaintiff in error. If we correctly understand the practice prevailing in this court, where the court from which a case is appealed, or from which a writ of error is granted, has adopted a finding of facts, such finding of facts are not disturbed by your Honors, who interpret the law as applicable to the facts ascertained by the court from which the case originates. We therefore adopt the findings of fact by the Supreme Court of the State of Louisiana appearing in the transcript at pages 211 to 214 inclusive, which is as follows:

> "It is next contended by plaintiff that the prescription runs only from the date of the discovery of the fraud, and that in the present case the fraud was discovered only about a month before the filing of the suit.
>
> The evidence goes to show that during the pendency of the bankruptcy proceedings the trustee had, or might readily have had, all the evidence he has produced in this case, save, perhaps the positive and direct testimony of the bankrupt Benoit to the fraud. The plaintiff trustee testified as follows:
>
> "Did you cause him (referring to Judge Overton, his attorney) to make any

investigation relative to the disposition of this land which Benoit had made in Texas?

A. We made an investigation. We could not get anything at this end of the road, only a little surmise that such a thing had been done. We could get nothing definite, and it was late in the proceedings * * * I told my attorney what I had heard and he started an investigation, which he continued for some time, * * * and he spent some money, I don't remember how much, probably $25 or $30, and finally he reported to me that the investigation did not amount to anything; that he could not get anything tangible. * * *

Q. Mr. Kinder, what is it you heard about his selling land in Texas that caused you to make that investigation?

A. Somebody, I don't remember who it was, asked me if Benoit had turned in that land that he had in Texas. I don't remember who it was, and I examined the schedule and I saw there was nothing in reference to lands in Texas. Whoever it was told me what county it was in, and we started without any information in regard to it, and I turned the matter over to my attorney, and he made the investigation and advised me that it wasn't worth while to.

Q. Did you ask Mr. Benoit anything about it?

A. No; I never asked Mr. Benoit anything about it that I remember of.

Q. After you found out it was sold to Mr. Scharff, did you ask him about it?

A. No, sir.

Q. You were acquainted with Mr. Scharff?

A. Yes, sir.

Q. Did you ever ask Mr. Martin, the notary before whom the deed was passed?

A. I never found out who passed the deed. I never was able to ascertain anything at this end of the line; everything was shut out.

Q. Mr. Kinder, was there anything in the Benoit bankruptcy which aroused your suspicion at all that there had been fraud committed?

A. Nothing except that land.

Q. You say that land—you mean the Texas land?

Q. I mean the Texas land—well, there was some other things, too. I will say that there were other things we inquired into; there was a sale of some stock down there and we had a hearing or two before Judge Taylor in regard to stock that Mr. Benoit had sold, and we had one or two hearings before the referee, and the investigation proved that Mr. Benoit had sold the stock for his son.

Q. So, then, if I understand you correctly, at that time you had suspicion in

your mind that something of a fraudulent nature regarding the sale of this Texas land?

A. All I could get was a little hint of this thing. I could not find a man in Welsh who would tell me anything about it.

Q. Mr. Kinder, you never had Mr. Scharff, nor Mr. Martin, nor Mr. Welsh, nor Mr. Benoit, summoned before the referee in bankruptcy and asked them about this land prior to the time when you were discharged as trustee in the original appointment?

A. I did not know that Mr. Martin or Mr. Welsh knew anything about it.

Q. Did you have either of these that I have mentioned summoned before the referee and interrogate them?

A. No, sir; not at that time for this reason; that it seemed like one big community, and they were all friends, and would not tell anything about it. I don't remember the individuals—who they were; but I questioned parties around Welsh, and they would give me some evasive answer and walk off. I turned the matter over to my attorney, and we kept it up until he said it was useless to spend any more money on an uncertainty. He said there might be an equity in it for the creditors, and there might not. He said it was not worth while to spend any more money.

Q. When was it that you first ascertained positively that this sale had been made, as alleged by you in you petition?

A. * * * Yes; positively since the case was reopened.

Mr. Winston Overton, now Judge, was the attorney for the trustee. He wrote to lawyers in Texas, where the land in question is situated, concerning the status of the land, and in due course received letters in reply:

Q. Judge, after receiving these letters, what did you do?

A. I considered the matter and under all circumstances that was before me at the time, I felt that there would be no equity in the event we instituted suit and succeeded with the suit, that is to say, no equity in the land after the sale at forced sale for the creditors. Then I took the letters and went over to General Taylor's office. He was then referee in bankruptcy and I made a verbal report to him and filed these with it as a part of my report and took no further steps in the matter.

Q. Explain why there would be no equity if the land was sold at forced sale?

A. In favor of the creditor?

Q. Yes, sir.

A. That was simply my conclusion; in other words, I was at that time under the impression or belief that lands were de-

teriorating in value, and if I mistake not it was on account of the crop conditions.

By the Court:

On account of what?

A. Crop conditions. Furthermore I knew that there, or felt there were two mortgages on the land which I believed to be good mortgages, and I thought that after the expenses of the litigation were paid and after the land was sold at forced sale and the mortgage indebtedness paid, which I thought to be a valid indebtedness, that there would be little or nothing for the creditors; in other words, it was scarcely worth while to make the attack. I got no further than that.

I made an investigation to learn if there was or was not fraud in the transaction. I felt that it was susceptible of attack, and I felt this largely because Mr. Benoit and Mr. Scharff resided in the parish of Calcasieu, and the land was situated in Texas and the consideration seemed to be large and I doubted whether or not Mr. Scharff would buy land costing as much as that seemed to cost, situated in the state of Texas, and especially as I did not know at that time or before that Mr. Scharff was a man of considerable means, though I knew he was a man of ordinary means, or at least believed so. In other words, I thought he would keep his money over here instead of going to Texas with it under the circumstances. I gave my impressions to Gen.

Taylor (then referee having charge of the Benoit bankruptcy) and while I thought probably the sale was susceptible to attach because of the surrounding circumstances, yet I did not feel as if the creditors were gaining anything by it even should we succeed in setting it aside.

"No sir, I did not have sufficient evidence to set aside at that time. In other words, if this mortage had not existed on the land, I would have asked the trustee to make an investigation and find out whether or not the evidence could be had upon which suspicions could be verified, or in other words, proved to be correct and well founded."

"It appears from the foregoing that during the pendency of the bankruptcy proceedings, the plaintiff suspected the fraud now sought to be relied upon and that if the enquiries concerning same were not prosecuted further it was simply because, owing to the mortgages upon the property, the doing so was not supposed to be worth while. Not only the suspicions of the plaintiff were fully aroused, and not only was plaintiff possessed of all the facts referred to above, but plaintiff had the right to summon the bankrupt before the referee and submit him to an examination under oath concerning his affairs. Had this been done, the bankrupt would have either had to perjure himself or make then and there the state-

ments which he has made in the present case, upon which the plaintiff is relying in the present case, for showing fraudulent character of the transaction. The court cannot gratuitously assume that the bankrupt would have perjured himself. But whether he would have done so or not, is really immaterial, since a litigant who has voluntarily abstained from availing himself of the means put in his hand by the law itself for the ascertainment of a suspected fact, cannot be allowed to plead his ignorance of such fact for arresting the course of the statute of prescription and repose."

ARGUMENT.

May it Please the Court:

We are unable to find where this court has been called upon to interpret paragraph (d) of Sec. 11 of the Bankrupt Act of 1898:

> "Suits shall not be brought by or against a trustee of a bankrupt estate, subsequent to two years after the estate has been closed."

The plaintiff has filed no assignment of error, to the interpretation by the supreme Court of Louisiana, that the Benoit bankruptcy was closed on June 28, 1905, (Tr. p. 210) as provided by sub-head (8), Sec. 2 of the Bankruptcy Act of 1898:

> "Close the estates, whenever it appears that they have been fully administered, by

approving the final accounts and discharging the trustees."

Therefore that portion of the judgment becomes final; plaintiff in error urging that prescription did not attach upon the closing of said estate on June 28, 1905, because the alleged fraud was concealed, in which contention he bears the burden of proof.

Counsel for plaintiff in error have endeavored to draw a distinction relative to the principles of law applied by this tribunal in interpreting the statute of limitation as contained in the Bankruptcy Act of 1867, and other statutes of limitation. We are unable to discover wherein a different rule was applied in the interpretation thereof, relative to suits by a trustee or assignee representing a bankrupt, and any other statute of limitation. Your predecessors held in the case of Bailey v. Glover, 88 U. S. 342 (22 L. Ed., 638) that it did not differ from any other Statute of Limitation, using the following language:

> "This is a Statute of Limitation. It is precisely like other statutes of limitation and applies to all judicial contests between the assignee and other persons touching the property or rights of property of the bankrupt transferable to or vested in the assignee, where the interests are adverse and have so existed for more than two years from the time when the cause of action accrued, for or against the assignee. Such is

> almost the language in which the provision is expressed in Section 5057 of the Revised Statutes."

In addition to the positive statement by your predecessors, that the statute of limitation contained in the bankrupt act is applied precisely like other statutes of limitation, in our research of authorities we have been unable to find a single suit decided, either by this court or by any other court of last resort, wherein a different rule of interpretation was applied to a statute of limitation in suits by the representatives of the bankrupt and in other suits by litigants in their individual capacities. On the contrary, in each instance the reasoning of the court has been guided by the rules adopted as applicable to statutes of limitation in general.

Counsel for plaintiff in error also urge that the Honorable Supreme Court of the State of Louisiana, applied its interpretation of the laws of prescription in said state, instead of following the decisions in this court. By referring to the decision rendered by said court (Tr. pp. 210 to 214), Your Honors will notice that this is the only court whose decisions it copied from, and adopted the language of your predecessors, is the case of Wood v. Carpenter, 101 U. S., 135 (25 L. Ed., 807). After quoting from said decision it also cited the cases of Felix v. Patrick,

145 U. S. 317 (36 L. Ed. 719); Johnson v. Standard Milling Co., 148 U. S. 370 (37 L. Ed. 485); Pearsal v. Smith, 149 U. S. 236 (37 L. Ed. 717); Hardt v. Heidweiler, 152 U. S. 548 (38 L. Ed. 548). (In printing the transcript evidently a line has been omitted, as it cites the case of Jessup v. Ill. Cent. R. R. Co. and gives it as 38 L. Ed., 553, which is the case of Hardt v. Heidweiler, the Jessup case being reported in the 43 F. 501); Lant v. Manley 71 F. 19; Jones v. Smith, 38 F. 381; Jessup v. Ill. Cent. R. R. Co. 43 F. 503; see Tr. p. 514.

One of the leading cases of this court, interpreting statute of limitation, is the case of Wood v. Carpenter, 101 U. S. 135 (25 L. Ed. 807); wherein the court, in considering a state of facts somewhat similar to those at bar, but decidedly more favorable to the plaintiff than those here presented, your predecessors used the following language:

> "It will be observed also, that there is no averment that during the long period over which the transactions referred to extended, the plaintiff ever made or caused to be made the slightest inquiry in relation to either of them. The judgments confessed were of record, and he knew it. It could not have been difficult to ascertain, if the facts were so, that they were shams. The conveyances to Alvin and Keller were also

on record in the proper offices. If they were in trust for the defedants, as alleged, proper diligence could not have failed to find a clew in every case that would have led to evidence not to be resisted. With the strongest motives to action, the plaintiff was supine. If, underlying frauds existed, as he alleges, he did nothing to unearth them. It was his duty to make the effort. It should be borne in mind that when the judgments were assigned to Keller the country was in the throes of the Civil War. Lee had not surrendered. Gold and silver, in the currency of the time, were at a large premium. All real property was largely depreciated. The future was uncertain. A transaction which then seemed wise and fortunate, a year later might be deemed greatly otherwise. It is hard to avoid the conviction that the plaintiff's conduct marks the difference between forethought in one condition of things and afterthought in another." 101 U. S. 25 L. Ed. 808.

Apply the above to the facts herein presented, the plaintiff knew of the sale, which was recorded in the proper office, investigated it enough to satisfy himself, his attorney and the referee in bankruptcy that nothing of value could be realized from a sale of same over and above the valid mortgages existing against it. At that time the land was several miles from a railroad, crop failure in that vicinity had greatly depressed land values. For these reasons the contemplated suit to annul the sale to

appellee was abandoned. Since then a railroad has been constructed across the land in question, crop conditions have improved, a tide of immigration has commenced flowing into Matagorda county; and as a natural consequence the value of this property has greatly increased and what looked to be a good price for the property in 1904 is considered a poor price in 1909 when this suit was instituted.

In the same decision on page 809 the court used this language:

> "Concealment by mere silence is not enough. There must be some trick or contrivance intended to exclude suspicion and prevent inquiry.
>
> "There must be reasonable diligence; **and the means of knowledge are the same thing in effect as knowledge iteslf.**
>
> "The circumstances of the discovery must be fully stated and proved, and the delay which has occurred must be shown to be consistent with the requisite diligence."

There is certainly no concealment on the part of the appellee or the other witnesses to the agreement; wherein he promised Benoit that if he made a good profit he **would remember him.** The statement was

made in the presence of Mr. Martin, the notary, and Messrs. Welsh and Labit, the witnesses to the act. None of them were cautioned or requested to say nothing about it, none of them had any reason to conceal it, and any of them would have promtply given the facts if they had only been interrogated. (Tr. Martin, 81; Scharff, 108.)

Plaintiff's statement accompanying his final account quoted supra, shows that he knew some of Benoit's transactions preceding his bankruptcy were exceedingly shady, certainly required him in the exercise of **reasonable diligence** to avail himself of the **means of knowledge** provided by par. (a) Sec. 21, Bankruptcy Act; by causing the bankrupt, the vendee, the notary and two witnesses to the execution of the deed to appear before the referee for examination. Especially is this true when he had received suggestions that something was wrong, and the knowledge possessed by his attorney who was advising him in the matter satisfied said attorney that the sale was susceptible of annulment and it was his duty to bring an action to set it aside **provided any equity existed for the creditors**.

Plaintiff at that time possessed the **means of knowledge** which are the **same as knowlege itself**.

As in Woods v. Carpenter, the plaintiff by **proper diligence could not have failed to find a clew that**

would have led to evidence not to be resisted, if fraud had been perpetrated. With the strongest motives to action, plaintiff was supine. If underlying frauds existed, he did nothing to unearth them. It was his duty to make the effort. No language more appropriate than the above quotation, could be chosen to fit the plaintiff's failure to institute and prosecute a suit to annul the conveyance to defendant, prior to closing the estate in 1905. Failing to do so prescription attached and was a complete bar to such a proceeding more than a year prior to his application to re-open the bankruptcy.

The plaintiff in error, his attorney and the referee, were only human and could not foresee the construction of a railroad across the property in question within a few years, the return of bountiful crops, the unprecedented immigration into that locality incident thereto; facilitated by the glowing accounts of ambitious, and perhaps not over scrupulous real estate agents, who were largely responsible for the influx of immigration; and the attendant phenomenal increase in land values in the vicinity where the property in contest is located. Doubtless the plaintiff in error and his attorney would have instituted the litigation to annul this sale in 1904 or 1905 regardless of the fact that, in their judgment, no equity existed for the benefit of the creditors.

even if the litigation had been successful, had they belonged to that class of officials which unfortunately, are sometimes entrusted with the execution of the bankrupt law and the administration of bankrupt estates, that called for the severe arraignment administered by your predecessors, in the following language:

> "It is a wise policy, and if those who administer the law could be induced to act upon its spirit, would do much to make the statute more acceptable than it is. But instead of this, the inferior courts are filled with suits by or against assignees, each of whom as soon as appointed retains an attorney, if property enough comes into his hands to pay one, and then instead of speedy sales, reasonable compromises, and efforts to adjust differences, the estate is wasted in profitless litigation, and the fees of the officers who execute the law." Bailey v. Glover, 88 U. S. 342; 22 Law Ed. 638.

On the contrary, the plaintiff in error, his attorney and the referee charged with the administration of Mr. Benoit's estate, were prompted by the best of motives in conserving the funds in hand that belonged to others, by not dissipating same in the institution and prosecution of litigation which, in their judgment, would be barren of financial benefit to the creditors, even if successful, though such a course might have added substantially to the allowance of

fees incident to its administation, and their course should be commended and not criticized.

In Felix v. Patrick, 145 U. S. 317, 36 L. Ed. 719, the court announced:

> "Mere silence is not sufficient concealment of fraud to prevent the running of the Statute of Limitations, where the facts of the fraud can be easily ascertained by inquiry.
>
> "The party who sets up, as an excuse for laches, the concealment of the fraud must allege the facts and circumstances which show that his delay is consistent with requisite diligence."

When the plaintiff learned in the fall of 1908, of the advance in the value of the property in question, he lost no time in causing Mr. Matrin and others to appear before the referee, and be examined as to the sale. The same diligence in 1904 or 1905 when the value of the property was depressed would have placed him in possession of all the facts. His excuse, corroborated by his attorney, for not doing so then is that the value of the property did not justify the expense of such an investigation and incident litigation, which most certainly cannot be construed to be a **positive act** of concealment by the defendant in error. In the same decision p. 726, 36 L. Ed., the court declared the **recording** of the **deed** in the **proper record negatived concealment.** Plaintiff in error

knew prior to closing the estate that the deeds from Labit to Benoit and from Benoit to Scharff, both executed on the same day, were duly recorded in the **proper record**, which afforded him the means of learning the notary and witnesses to the conveyance, from either of whom or the defendant in error, he could easily have obtained all the facts by simple inquiry. (Tr. 81-108.)

In Lant v. Mouley 71 F. 19, the court held where the deed is of **record there must be some affirmative act of concealment.** There most certainly was nothing in the nature of an **affirmative act** of concealment in the case at issue.

In Johnson v. Standard Mining Co. 148 U. S. 370, 37 L. Ed. 485-6, the law is declared to be:

> "While there is no direct or positive testimony that plaintiff had knowledge of what had taken place with respect to the title or development of the property, the circumstances were such as to put him upon inquiry; and the law is well settled that, where the question of laches is an issue, the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the facts already known by him were such as to put upon a man of ordinary intelligence the duty of inquiry."

Evidently the **facts already known** by plaintiff were such as to demand an inquiry in 1904 and 1905.

otherwise why did he make one? The duty of **inquiring relative to** a transaction implies an inquiry from those who are **presumed to know about it,** as the parties to it, the notary passing the act or witnesses to same; not some stranger to the transaction who probably had never heard of it. While plaintiff in error had ample opportunity to inquire of each person who would be presumed to know the details of the transaction in question, he failed to do so, which failure is a complete bar to the prosecution of a suit at this time.

Pearsall v. Smith, 149 U. S. 231, 37 L. Ed., 713:

> "It is necessary, in order to postpone the right of action on the part of the assignee in bankruptcy until the discovery of the fraud, that ignorance of it should have been produced by affirmative acts of the guilty party in concealing the facts."
>
> "In order to avoid the statute of limitations in a suit to set aside a deed for fraud, by want of knowledge of fraud, the bill must set forth what were the impediments to an earlier prosecuti n of the claim, how the plaintiff came to be so long ignorant of his rights, the means, if any, used by the defendants fraudulently to keep him in ignorance, or how and when he first obtained the knowledge of the matters alleged in the bill."

In the body of the decision, 149 U. S. 236 (37 L. Ed. 717) your predecessors say:

"Although this court has attached to Par. 5057 of the Revised Statutes a qualification, that qualification is that where relief is sought on the ground of fraud, it is necessary, in order to postpone the right of action on the part of the assignee in bankruptcy until the discovery of the fraud, that ignorance of it should have been produced by affirmative acts of the guilty party, in concealing the facts, and that there should have been no fault of want of diligence or care on the part of the person who claims the right of action; in other words, that when there has been no negligence or laches on the part of a plaintiff in coming to the knowledge of the fraud which is the foundation of the suit, and when the fraud has been concealed, or is of such a character as to conceal itself, the statute does not begin to run until the fraud is discovered by, or becomes known to, the party suing, or those in privity with him, or ought to have been so discovered or known.

"In the present case, the deeds of conveyance by Smith were recorded. The suit by the Kittles was a public suit. Notice of **lis pendens** was filed in it, giving the name and address of the attorney for the plaintiffs, and they were creditors through whom the present plaintiff claims, their names being included as creditors in the bankruptcy schedules. Charles Jones, the assignee in bankruptcy, was a lawyer of long standing, familiar with such matters. The bill does not set forth what were the impediments to

an earlier prosecution of the claim, how the plaintiff came to be so long ignorant of his rights, the means, if any, used by the defendants fraudulently to keep him in ignorance, or how and when he first obtained knowledge of the matters alleged in his bill. Badger v. Badger, 69 U. S. 2 Wall. 87, 95, 17: 836, 838); Richards v. Mackall, 124 U. S., 183, 189; (31:396, 400); Greene v. Taylor, 132 U. S. 415, 443 (ee:411, 420.)

"We think the present is a clear case in favor of the bar of limitation, both by the statute of New York and by the bankruptcy statute."

We call Your Honors' attention to the fact that your predecessors were construing the statute of limitation contained in the Bankruptcy Act of 1867, and their decision has been followed by courts in construing the Bankruptcy Statute in:

Eiffert v. Craps, 58 F., 573.

Kemp v. Nickerson, 66 Fed., 683.

Scott v. Little, 36 Fed., 565.

Dornald v. Simpson, 114 F., 370.

Claflin v. Middlesex Bank, 113 F., 961.

The law is announced in the case of Jones v Smith, 38 Fed. 381, to be:

"It is abundantly settled by authority that actual personal knowledge of the facts constituting the fraud need not be shown

to charge a person, who has been quiescent for a period longer than that fixed by statute, with discovery thereof. It is enough if he is put upon inquiry with the means of knowledge accessible to him."

In Jessup v. Ill. Cen. R. R. Co., 43 F. 503, the court announces "**means of knowledge, plainly within reach of stockholders by the exercise of the slightest diligence, is in legal effect equivalent to knowledge,**" to be the law where the statute of limitation is invoked to defeat an action to annul an alleged fraudulent lease.

In Hardt v. Heidweiler, 152 U. S. 561, 38 L. Ed. 553, the court uses language so appropriate to the case herein, that this court could with perfect propriety, adopt it with scarcely a change of verbiage:

"Indeed, so far as disclosed, it would seem that when the debtors failing, and failing for so large a sum, appropriated all of their tangible property to the payment of a few of their creditors, the others, including these plaintiffs, accepted the situation, and made no inquiry or challenge of the integrity of the transaction for nearly five years, such indifference and inattention must be adjudged laches. Upon this ground alone, and without reference to any other questions discussed by counsel in briefs, the decree of of the Circuit Court is affirmed."

Consider these principles of law in connection with the testimony of Judge Overton. (Tr. p 80), wherein he testifies as follows in response to a question by the court:

"A. I considered that matter and under all circumstances that were before me at the time, I felt that there would be no equity in the event we instituted suit and succeeded with the suit, that is to say, no equity in the land after the sale at forced sale for the creditors. Then I took the letters and went over to General Taylor's office. He was then referee in bankruptcy and I made a verbal report to him and filed these with it as a part of my report and took no further steps in the matter.

"Q. Explain why there would be no equity if the land was sold at forced sale?

"A. In favor of the creditors?"

"Q. Yes, sir.

A. That was simply my conclusion; in other words, I was at that time under the impression or belief that lands were deteriorating in value, and if I mistake not it was on account of the crop conditions."
By the Court:

"Q. On account of what?

"A. Crop conditions. Furthermore I knew that there, or felt that there were two mortgages on the land which I believed to be good mortgages, and I thought that

after the expenses of the litigation were paid and after the land was sold at forced sale and the mortgage indebtedness paid, which I thought to be a valid indebtedness, that there would be little or nothing for the creditors; in other words, it was scarcely worth while to make the attack. I got no further than that."

Again on p. 79:

"I made an investigation to learn if there was or was not fraud in the transaction. I felt that it was susceptible of attack, and I felt this largely because Mr. Benoit and Mr. Scharff resided in the Parish of Calcasieu and the land was situated in Texas, and the consideration seemed to be large and I doubted whether or not Mr. Scharff would buy land costing as much as that seemed to cost, situated in the State of Texas, and especially as I did not know at that time or before that Mr. Scharff was a man of considerable means, though I knew he was a man of ordinary means, or at least believed so. In other words, I thought he would keep his money over here instead of going to Texas with it under the circumstances. I gave my impressions to Gen. Taylor (then referee having charge of the Benoit bankruptcy) and while I thought probably the sale was susceptible to attack because of the surrounding circumstances, yet I did not feel as if the creditors were gaining anything

by it even should we succeed in setting it aside."

* * * *

"No, sir, I did not have sufficient evidence to set aside at that time. In other words, if this mortgage had not existed on the land I would have asked the trustee to make investigations and find out whether or not the evidence could be had upon which my suspicions could be verified, or in other words, proved to be correct and well founded."

The plaintiff testifies as follows (Tr. 67):

"Q. Did you cause him (Judge Overton) to make any investigation relative to the disposition of the land which Benoit had made in Texas?

"A. We made an investigation. We could not get anything at this end of the route, only a little surmise that such a thing had been done. We could get nothing definite and at the time I got a rumor that there was such a thing that had occurred, and it was late in the proceedings—the proceedings had been going on some time, I don't know how long, and I told my attorney what I had heard and started an investigation which he continued for some time, I don't remember how long. It was a good while ago, and he spent some money, I don't remember how much, probably $25.00 or $30.00 and finally he reported to me that the investigation did not amount to anything; that he could not get anything tangible, and

that he did not believe there was an equity in it for the estate at that time."

* * * *

"Q. Mr. Kinder, what is it you heard about his selling land in Texas that caused you to make that investigation?

"Somebody, I don't remember who it was, asked me if Benoit turned in that land that he had in Texas. I don't remember who it was and I examined the schedule and I saw nothing with reference to lands in Texas. (All that is vague in my mind.) Whoever it was probably told me what county it was in and we started without any information in regard to it and I turned the matter over to my attorney, and he made the investigation and advised me it wasn't worth while to—

"Q. Did you ask Mr. Benoit anything about it?

"A. No, I never asked Mr. Benoit anything about it that I remember of.

"Q. After you found out that it was sold to Mr. Scharffff, did you ask him about it?

"A. No, sir.

"Q. You are acquainted with Mr. Scharff?

"A. Yes, sir

"Q. Have known him in the neighborhood of twenty years?

"A. In that neighborhood.

"Q. Did you ask Mr. Martin, the notary before whom the deed was passed?

"A. I never found out who passed the deed. I never was able to ascertain anything at this end of the line; everything was shut out.

"Q. You could have easily found in the records of Matagorda county the name of the notary before whom the deed was passed?

"A. I supposed that my attorney would attend to that.

"Q. Mr. Kinder, was there anything about the Benoit bankruptcy which aroused your suspicion at all that there had been a fraud committed?

"A. Nothing except that land.

"Q. You say that land; you mean the Texas land?

"A. I mean the Texas land. Well, there was some other things, too. I will say that there were other things we inquired into. There was a sale of some stock down there and we had a hearing or two before Judge Taylor in regard to stock that Mr. Benoit had sold and we had one or two hearings before General Tayler and the investigation proved that Mr. Benoit had sold the stock for his son."

While the land transaction between the bankrupt and the defendant in error, were so vividly

stamped upon his memory, he had evidently forgotten the trivial circumstances referred to in his final report, which elicited the following language: (Tr. 129-130.)

> "In filing my final account in the above named bankruptcy, I deem it my duty to lay before the Court some of the difficulties connected with the settlement of same. While the schedule showed book assets of about $8,000.00 my collections have only been $111.62, and this has not been my fault, as I have worked diligently trying to collect the accounts that were presented on the schedule, but in every account—the books that was over $20.00 I have been told by the debtor that the account had been settled and the fault of it having been on the schedule was all laid to the bookkeeper and these statements were all proven by the bankrupt, the bookeeper having conveniently left the country and I have not been able to find her. Previous to my taking charge of the estate, the store had been positively gutted of everything of any value, and there was nothing left for me to sell. The glass counters, the computing scales, typewriter, delivery wagon and horse, and everything of value had been sold previous to the surrender, and the assets such as they were, were unsalable. My attorney, Mr. Overton, has ably assisted me in huting for the assets that should have been, but we have been unable to find anything that was worth making a fight for, that we could hold. The

bookkeeper, who, as the books show, had been working for a salary of $30.00 per month previous to the surrender, has been credited on the books for the last month, when the receipts had dropped to 1.10 of what they had been, with $75.00 salary and carried on the schedule as a privileged creditor for $63.64 when at the salary she had been getting she should have been credited with $3.64; also Dilva Benoit, son of the bankrupt, had worked one month in the store and was credited on April 30th with $35.40 for a month's salary, and on the 14th of May, the day the store was closed was credited with four months' work at $50.00 per month, and is credited on the schedule as a privileged creditor for $155.35 when he is really indebted to the estate for monies collected after the surrender and which he had denied and refused to turn over to the trustee, and as he has nothing of his own and is a minor, it is impossible to collect of him. Respectfully submitted,

J. A. KINDER, Trustee."

It is very strange, indeed, that with such a firm conviction of fraud in this transaction, towering above all the other shady transactions of the bankrupt, that his voluntary statement shows he was familiar with, knowing Mr. Scharff for about twenty years (Tr. 68), knowing that he had acquired this

tract of land, seeing him almost daily (Tr. 69) that he never asked Mr. Scharff something about same.

Plaintiff in error knew that on Dec. 12, 1902, Benoit conveyed one-half of this land to Messrs. Labit. (See letter from Texas attorney, Tr. 144-145.) He also knew that on May 2, 1904, the Messrs. Labit had reconveyed this half interest to Mr. Benoit, who, on the same day had conveyed the entire tract to Scharff. (See same letter, Tr. 144-145.)

During the time plaintiff in error was settling this estate Mr. J. H. Labit resided in the small town of Welsh, being engaged in the lumber business there, yet plaintiff never asked him anything about the transaction. (Tr. p. 69.)

While plaintiff probably did not know at that time what notary passed the act of sale from Mr. Benoit to Mr. Scharff, or the witnesses to same, by simply writing the attorney in Texas who furnished the other information, or the clerk of Matagorda county, he could easily have learned that Mr. C. P. Martin, whom he had known for 18 to 20 years (Tr. 97) was the notary; that Mr. W. W. Welsh, one of the witnesses, was a nephew of his (plaintiff) by marriage, cashier of one of the banks at Welsh, with whom he had talked frequently about the Benoit

bankruptcy; and Mr. Labit, who he already knew had reconveyed a portion of this land to Benoit on the same day, was the other witness. (Tr. 145.)

Plaintiff summoned witnesses before the referee for examination relative to the sale of some stock by Mr. Benoit (Tr. p. 68), yet he never had either Mr. Scharff, Mr. Martin, Mr. Welsh, Mr. Labit or Mr. Benoit summoned before the referee (Tr. p. 69) for examination under Sec. 21, paragraph (a) of the Bankruptcy Act; nor did he even ask either of them anything about this transaction. Possessing the knowledge of the conveyance from the bankrupt to the defendant that this record shows he possessed, as well as the knowledge concerning the questionable acts referred to in the trustee's final report and entertaining the belief which he now says he then had as to the legality of this land sale to the defendant, his duty is tersely announced by this Court in Shaner v. Alterton, 151 U. S. 607, 38 L. Ed. 286.

> "Whatever is notice enough to excite attention and put the party on his guard and call for inquiry, is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant of it."

Plaintiff and his attorney had **sufficient information to lead him to every fact** pertaining to the

conveyance herein attacked, and Par. (a), Sec. 21 of the Bankruptcy Act furnished him an inexpensive method of ascertaining every fact connected therewith prior to instituting a suit to set aside said conveyance.

> Sec. 21-(a). "A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt and his wife, to appear in court or before a referee or the judge of any state court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in progress of administration under this act."

Such an investigation, or a simple injuiry on part of plaintiff of the parties **who it is presumed would know the details of the transaction,** would have placed him in possession of the real facts, (See testimony of C. P. Martin, Tr. 81):

> "Q. Mr. Martin, at any time since that transaction occurred, on May 2nd, 1904, if you had been asked relative to the facts by Mr. Kinder, the trustee, or any attorney representing him, was there any reason why you should not have told them?
>
> "A. No, sir.
>
> "Q. No reason to conceal the facts?

"A. None whatever."

See testimony of Mr. Scharff, on p. 108, Tr.:

"Q. Mr. Scharff, when Mr. Kinder was trustee of this bankruptcy originally, did you see him in Welsh any of the time?

"A. Yes, we used to play a game of cards together once in a while and take a drink occasionally. Every day I used to meet him there. He never refused it.

"Q. Did he ever mention to you anything about this transaction?

"A. He did not.

"Q. Did you have any reason to conceal from him or any one else the real facts in the case?

"A. I never concealed any transaction I ever made that I remember, and I never concealed any particularly about this case.

"A. I never concealed anything. There was nothing to conceal."

Why should he conceal it? His purchase was in good faith, for a valuable consideration, at a time unsuspicious, and if the trustee had known all the facts then he could not have annulled the sale.

The only thing that prevented plaintiff in error from instituting a suit to set aside the transfer was the honest conviction that no equity remained for

the creditors after paying the valid mortgages resting upon the property; as the trustee's attorney testifies, that he was then satisfied the conveyance was one susceptible of attack and it was his duty to make an investigation preparatory to bringing a suit to recover the property, providing a sufficient equity existed to justify such proceedings. The great preponderance of the testimony as to the value of the property verifies the wisdom of this conclusion. (Tr. p. 174 to 202.) It is immaterial if this conclusion was erroneous or correct, the knowledge possessed by plaintiff was sufficient to start the prescriptive period of two years, the moment the estate was closed by the approval of his final account and his discharge as trustee. Plaintiff's inaction at that time was not the result of concealment on the part of Scharff or any of the witnesses to the transaction.

The case of Bates vs. Peebles, 151 U. S., 162, 38 L. Ed. 112, after reviewing extensively and commenting upon various decisions, distinguishing between an **active** and a **passive** concealment of fraud, your predecessors at pages 162 and 163, 38 L. Ed. 112, used the following language:

> "We think the court erred in this instruction. It assumes that the same evidence which tended to show conspiracy between Edward Preeble and the defendants to obtain

these bonds was also evidence of an intention on defendant's part to keep a knowledge of the transaction from the plaintiff. This, however, does not necessarily follow. If it did, the result would be that whenever a party has been guilty of a fraud, which it is for his interest should not be known by the person upon whom it is committed, he would practically lose the benefit of the statute, though he may not have made the slightest effort to keep it secret. The vice of the instruction in this particular was that there was no evidence whatever that the defendants, or either of them, said or did anything before or after the securities came into their hands, to conceal the transaction from the plaintiff."

The above is especially applicable in the case at bar.

In the case of Johnson vs. Ata. G. & W. I. T. Co., 156 U. S. 648, 39 L. Ed. 566, your predecessors announced the law to be:

"Where the question of laches is at issue, the plaintiff is chargeable with such knowledge as he might have attained upon inquiry, provided the facts already known by him were such as to put a man of ordinarily inteligence on inquiry."

In the case of Foster vs. Mansfield, et. al., 146 U. S., 88, 36 L. Ed. 899, the court announces the law to be:

"If a person is ignorant of his interest in a certain transaction, no negligence is im-

putable to him for failing to inform himself of his rights, but if he is aware of his interest, and knows that proceedings are pending the result of which may be prejudicial to such interest, he is bound to look into such proceedings so far as to see that no action is taken to his deteriment."

The language used by this court in deciding the case of Norris v. Hagan, 136 U. S. 392, 34 L. Ed. 427, is very applicable to the state of facts here presented for consideration:

"Even the principle of a court of equity, that time does not begin to run against a party on whom a fraud has been committed until that fraud has been discovered, can do the plaintiff no good in the present case. That he knew about the fraud, if there was one, in 1869, when the applied to Beatty, who refused to take his case; and that the facts out of which he was bound to know this fraud, if his bill be true, existed, were open, were patent and could not fail to be discovered by any sort of inquiry or investigation, is so clear that there is no room for the doctrine of his having discovered these facts only a year or two before the suit was brought, or indeed after he has employed counsel.

"It is a part of this general doctrine, that to avoid the lapse of time or Statute of Limitation, the fraud must have been one which was of such a character as necessarily implied concealment. Neither of these principles can apply to the defendants in this

case. The acts which constituted the fraud as alleged in the bill were open and public acts. The note and the mortgage were recorded in the proper public office of the proper county. The possession of defendants was obtained by judicial proceedings were open to everybody's examination, and which were probably well known in the entire community. The very circumstance that in 1869 the plaintiff consulted a lawyer upon this subject, shows that he was aware of the fact that defendants were contesting his rights to the property, and that, if he had made any inquiry at all, he must have known of the proceedings on which they rested their title.

"Under all the circumstances of the case, we are satisfied that the two judges who held the circuit court were justified in sustaining the demurrer to the bill. The decree is therefore affirmed."

Apply said decision to the facts here presented, it effectually bars plaintiff's right of recovery.

In Kirby vs. Lake Shore, etc., 120 U. S. 130, 30 L. Ed. 570, the court announced the law to be:

"Where relief is sought in equity on the ground of actual fraud especially if such fraud has been concealed, time for commencing suit will not run against the plaintiff until the discovery of the fraud, or until,

with reasonable diligence, it might have been discovered."

In Putman, et. als., vs. New Albany, etc., 83 U. S. 390, 21 L. Ed. 361, your predecessors announced the law to be:

> "A court of equity will not set aside a fraudulent transaction at the suit of one who has been quiescent during a period longer than that fixed by the Statute of Limitations, after he had knowledge of the fraud, or after he was put upon inquiry with the means of knowledge accessible to him."

In the case of Williamson vs. Beardsley, 69 C. C. A. 618, the court expresses the law in the following language:

> "Discovery as employed in a statute or equitable rule of limitations and knowledge are not convertible terms, nor does the former mean the result of a resort at leisure to known sources of information. The possession of the means of knowledge is equivalent to knowledge itself. A party who has the opportunity of knowing the facts of which he complains, cannot avail himself of his inactivity, and thus escape the imputation of laches. The grounds of attack against the validity of the orders of sale and the executor's deeds were matters of record. They had notice of the pendency of the administration proceedings sufficient to excite their attention and put them on guard as to the

course thereof. Under these circumstances they must be deemed to have had actual knowledge of what the records showed."

The decisions of the Supreme Court of the State of Louisiana in construing the civil law and the articles of the Civil Code, in force in that state, do not differ materially from those of this and other Federal Courts.

In the case of Bory vs. Knox, 38 La. An., p. 379, the law was declared to be:

> "If an opportunity is offered a party to know and learn about a certain matter bearing on his interest, and he fails or refuses to profit by it, if he closes his eyes to the notice spread before him and shuts his ears to oral information directly imparted to him, the law will hold him as bound by the same, and as fully notified as if he had taken thorough personal cognizance at the time of the information imparted and the notice given."

In the Succession of Dauphin, 112 La. 140-141, the court uses the following language:

> "Whatever is notice enough to excite attention and put the party on his guard and call for inquiry, is notice of everything to which such inquiry might have led. When a person has sufficient information to lead

him to a fact, he shall be deemed conversant of it."

These decisions were affirmed in the case of Poirier v. Cypress Co., 127 La., 936; Bank v. Jeansonne, 120 La., 399.

Plaintiff in error relies upon a line of decisions, wherein the parties guilty of fraud, have also been guilty of some **affirmative acts** of concealment which prevented the injured parties from discovering the fraud until some time after the perpetration thereof. The first case decided by your predecessors and relied upon by the plaintiff in error, is that of Bailey v. Glover, 88 U. S. 342, 22 L. Ed. 638. We have no hesitancy in adopting every expression contained in said decision, that is applicable to the facts herein presented, as there is only one judgment consistent therewith; which is one affirming the Supreme Court of the State of Louisiana. Your predecessors stated the law to be as follows, 22 L. Ed. 638:

> "To prevent this as much as possible, Congress has said to the assignee: You shall commence no suit two years after the cause of action has accrued to you, nor shall you be harrassed by suits when the cause of action has accrued more than two years against you. Within that time the estate ought to be nearly settled up and your functions

discharged, and we close the door to all litigation not commenced before it has elapsed."

* * * *

"In suits in equity where relief is sought on the ground of fraud, the authorities are without conflict in support of the doctrine that where the ignorance of the fraud has been produced by affirmative acts of the guilty party in concealing the facts from the other, the statute will not bar relief provided suit is brought within proper time after the discovery of the fraud."

* * * *

"We are also of the opinion that this is founded in a sound and philosophical view of the principles of the statutes of limitation. They were enacted to prevent frauds; to prevent parties from asserting rights after the lapse of time had destroyed or impaired the evidence which would show that such rights never existed, or had been satisfied, transferred or extinguished, if they ever did exist."

* * * *

"While we might follow the construction of the state courts in this matter, where those statutes governed the case, in construing this Statute of Limitation passed by the Congress of the United States as part of the law of bankruptcy, we hold that when there has been no negligence or laches on the part of a plaintiff in coming to the knowledge of the fraud which is the foundation of the suit, and when the fraud has been concealed, or is of such character as to conceal

itself, the statute does not begin to run until the fraud is discovered by, or becomes known to the party suing, or those in privity with him."

Applying the law as expressed in the quoted decision, relied upon by plaintiff in error, to the statute now before the court for consideration: it amounts to Congress saying, to the plaintiff in error, that after two years from the closing of the estate you shall not be harassed and annoyed with any suits, nor can you harass or annoy others with suits, except in cases where the parties have been guilty of **affirmative acts of concealed fraud**, which does not exist in the case at bar.

Counsel for plaintiff in error, urges that the rule announced in the case of Traer v. Clews, 115 U. S. 528, 29 L. Ed. 467, controls in the case here presented. The facts are entirely different, as Mr. Traer fraudulently misrepresented the amount of assets in his possession, in a fiduciary capacity, when asked relative to same, by the assignee and appraisers, giving their value at $1,200.00 when they were $15,000.00 In addition he had an interposed person buy the stock in the name of such **ulter ego**, and not his own, both of which were done for the purpose of deceiving the interested parties and concealing such deceit."

Suit to annul was filed within the prescriptive period against the interposed person and Mr. Traer,

but Mrs. Traer's connection with the transaction was successfully concealed until after the prescriptive period expired. Immediately upon discovering that the stock had been transferred to Mrs. Traer, the purported purchaser thereof, the evidence of such transfer to her having been concealed from the plaintiff by Traer, the custodian of the stock records; an amended bill was filed, which the court properly held to be timely, under the state of facts then presented for consideration, which are quite different from those herein. In the Traer case the plaintiff did not know Mrs. Traer to be either the real purchaser, or interested in the acquisition of the stock, as the stock records of a corporation were not subject to public inspection, like the deed records relative to the transfer of land. Mr. Traer made false and fraudulent representations as to the value of the assets in his possession as a fiduciary, for the purpose of deceiving the assignee of the bankrupt owner, and enabling the interposed agent of Mrs. Traer to purchase same at a ridiculously low price. In the case at bar the plaintiff in error knew that the defendant had purchased the property, the deed of transfer was of record, the defendant in error made no false statements or misrepresentations relative thereto. The plaintiff in error at that time strongly suspicioned that the sale to defendant was susceptible of attack, but he did not institute the proceedings because he

did not consider that an equity existed after the payment of the valid encumbrances upon the property; whereas in the Traer case there was no suspicion that Mr. Traer had made any false representations relative to the amount of funds in his possession as a fiduciary, or that his wife was the actual purchaser, until long after the transaction was closed. The sale at issue therein, was one by the assignee as such, and not one made by the bankrupt, as in the case now under consideration.

The Bankrupt Act of 1867 did not give to the assignee in bankruptcy the adequate means of ascertaining the real facts, relative to any suspicious transactions of the bankrupt as does Section 21 (a) of 1898:

> "Section 21 (a). A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt and his wife, to appear in court or before a referee or the judge of any state court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this act."

A comparison of the language above quoted with the corresponding provisions of the Act of 1867, which was in force at the time the case of Traer v.

Clews originated, is embodied in Section 22, which reads as follows:

> "The court may, on application of the assignee, or of any creditor, or of the bankrupt, or without any application, examining upon oath the bankrupt, or any person tendering or who has made proof of claims, and may summon any person capable of giving evidence concerning such proof, or concerning the debt to be proved."

Your Honors will note, that under the present law the trustee could have caused any person to be summoned before the referee, and there examined under oath, whereas under the Act of 1867, he was confined to an examination of the bankrupt or any person tendering proof of a claim, or who had proved a claim. The assignee had no authority to summon either Mr. or Mrs. Traer or their interposed agent, for examination relative to a deception practiced upon him, as assignee, in acquiring property of the bankrupt estate, as the parties to such deception were neither the bankrupt, or a party who had proved a claim, or tendered one for proof. He must first institute a suit in equity and obtain the information either through defendant's answer, or by evidence taken contradictorily; which procedure prevented his learning of Mrs. Traer's connection with the transaction until more than two years after the sale complained of.

In the case of Rosenthal v. Walker 111 U. S. 185, 28 L. Ed. 395, relied upon by the plaintiff in error,

your predecessors state the facts then under consideration to be:

> "It appears from the record that Player, the original assignee in bankruptcy of Carney, was sworn on the trial as a witness in his own behalf. He testified that he was an attorney; that he had been one of the solicitors of the creditors of Carney in the proceedings to have him adjudicated a bankrupt; that in pursuance of his rights as assignee he had in May, 1876, subjected the bankrupt to an examination pursuant to the provisions of the Bankrupt Act, at which said bankrupt, after having testified at great length, finally refused to answer any other questions relating to his property or affairs, on the ground that his answers might criminate him, as there was an indictment for a criminal offense under the bankrupt laws of the United States then pending against him; that thereupon said examination ceased, and defendant in error took no further steps to compel said bankrupt to answer, because he thought it would be better not to press him at that time, and the defendant in error did not again examine the bankrupt until November, 1879."

In interpreting the law applicable to the state of facts then under consideration, in connection with an instruction given the jury by the trial judge, your predecessors announced the following rule:

> "It is for you to say whether it is a case where this assignee has failed to make the

discovery, because he did not use due diligence, or whether it is a case where, using the diligence, he failed to make the discovery because the parties to the transaction, who were already the repositories of its existence, one or more of them, wickedly concealed it and filed oath upon oath in effecting that concealment. * * * * So far as the instruction asked assumes any fact I decline to give it, and I shall leave the whole question of prescription or no prescription to be determined by you. It is undoubtedly true that if he was put upon inquiry as a reasonable man, which he refused to follow up, and which, if you found as a fact, if he had followed up would have led to a knowledge, then the statute would have been a bar. But it is for you to say whether upon all the evidence, there has or has not been such concealment and so continued as would qualify the rule as to prescription."

"We are of opinion that the issue was fairly presented by the charge given by the court, and that the instructions requested by the plaintiff in error would have been unjust to the defendant in error, and have required the jury to shut their eyes to all the evidence on one side of the issue to which the charges referred."

Applying the law above quoted, to the state of facts here presented, the only judgment susceptible of rendition, is one maintaining the plea of prescription urged by the defendant in error. In the case at bar no one was examined before the referee and inter-

rogated, as in the case then under consideration; the bankrupt here had not claimed the privilege accorded him by law of refusing to answer questions, because it would incriminate him; there the assignees had no knowledge of the parties with whom the fraudulent transactions, involving moveable property only, had been conducted; whereas in the case at bar, the plaintiff in error knew to whom the property had been sold; he investigated its value, he satisfied himself that the mortgage encumbrances were valid, and that there would be no equity for the estate because the property would not sell for more than enough to satisfy the valid mortgages existing upon it.

Your predecessors announced in the decision above quoted, that it was the duty of the assignee to use due diligence to ascertain the circumstances of any fraud, and if he failed to do use such diligence the Statute of Limitation would attach.

Plaintiff in error cites the decision in the case of Board of Levee Commissioners v. Tensas Delta Land Co. 204 Fed. 736.

The state of facts there under consideration were entirely different from those here presented. While the principles of law announced by the court in the cited decision, when applied to the state of facts here presented, maintains the position of the defendant

and warrants an affirmation of the judgment appealed from.

In paragraph 6 of the syllabus the court announced the law to be:

> "In suits of equity, where relief is sought on the ground of fraud, and the party injured remained in ignorance of the fraud without fault or want of diligence on his part, limitation does not begin to run until the fraud is discovered, although there is no suspicious circumstances, and no effort on the part of the party committing the fraud to conceal it."

In the case now under consideration, the plaintiff in error testifies that the land transaction was suspicious at the time he was originally administering the estate (Tr. p. 68); that he caused an investigation to be instituted, in which he is corroborated by his attorney. Whereas in the case then under consideration, **the transaction was fair on its face, and there was nothing to cause suspicion, until the facts were incidentally learned by a third person who communicated them to the plaintiff.** On page 742 of the decision the court states the allegations of the bill to be as follows:

> "In brief, the bill shows with elaboration that the levee board received these lands in trust for the public, and that the persons

who organized and composed the defendant company obtained the lands by bribery from the board for $130,000, when they were worth $500,000. It requires no argument or authority to show that this constituted a fraudulent betrayal of trust on the part of the members of the board who received the bribes and who caused the conveyances to be made, and also that the conspiracy to obtain the lands in this way, and to use the money and stock for the corrupt purpose, was a gross fraud on the part of those who participated in the bribery and in the organization of the defendant company, which subsequently received the conveyances of the land. It seems to us that the facts are sufficiently alleged."

On page 744 it is stated:

"The members of the levee board who participated in the fraud and received the bribes, and the sales agent of the board, Simms, who also received a bribe, of course knew of the existence of the fraud, for they were participating in it. Notice to the plaintiff, or to other members of the board, is not to be presumed from the knowledge of those who participated in the fraud. Ordinarily, notice to an agent is treated as notice to the principal, because of the presumption that he will communicate the facts known to him to his principal. But, in a case like this, notice is not presumed to have been communicated; on the contrary, the facts alleged here create the presumption that the agent and members of the board

who received the bribes did not inform the plaintiff or the other members of the board."

* * * *

"In this case, the principal persons receiving the bribes were the president and two members of the levee board. They and the sales agent, who also received a bribe, were in positions of trust, and there is nothing in the record to show that the plaintiff, or members of the board not participating in the fraud, had any cause to suspect that they were engaged in the alleged conspiracy until the board was notified of the fraud in 1909. It is alleged that the conspiracy and the receipt of the bribes were kept secret and 'locked in the minds' of the guilty parties, and that the plaintiff was kept in ignorance of it.

"The fiduciary relation that existed between the plaintiff board and its members and its land agent, Simms, was such that the plaintiff would naturally place confidence in them, and, in view of the relationship that existed between them, we are of the opinion that the plaintiff was not charged with the duty of making an investigation or inquiry to ascertain whether, in fact, a fraud had been committed, unless it had notice, or was chargeable with notice, of the existence of some fact that would naturally excite suspicion."

From the above quotation, your Honors will readily perceive that the state of facts therein presented no more resembles the case herein, than day

resembles night, and the principles of law therein announced are those applicable to an entirely different state of facts from those presented herein, except as to the legal duty, **to make inquiry as soon as suspicion of fraud is excited.**

Counsel for plaintiff in error argue that a fair interpretation of the decision in Rock Island Plow Co. v. Reardeon, 222 U. S. 505 (56 L. Ed. 231) holds that the rights of the creditors in existence at the time the petition in bankruptcy is filed, cannot be subsequently destroyed or lost by the laches of the trustee. We have read and re-read the decision carefully, and we are unable to place thereon the construction which is contended for by counsel for plaintiff in error. The court was then considering a lien and privilege in favor of certain creditors existing by reason of the issuance of a writ of execution and placing same in the hands of the Sheriff. It was not considering any right of action to annul a transaction between a bankrupt and another on account of fraud. This right of action under the bankrupt statute is preserved in the trustee alone, and no creditor has a right to prosecute same, in his individual capacity or for his individual benefit, after the debtor is adjudged a bankrupt; but it must be prosecuted by the trustee for the benefit of all creditors.

We are unable to agree with counsel for plaintiff in error, that the quotation from the case of Galliher

v. Caldwell, 145 U. S. 362, has any application to the case at bar, as the court was then considering a question of laches in an equity proceeding, and was not considering the question of limitation under an express mandatory provision of a statute. Conceding for the sake of argument that laches and limitation are synonymous, and apply the quotation to the state of facts here presented, certainly the plaintiff in error is not free from laches as therein defined, and must bear the burden of his own failure to avail himself of the information conveyed to him in 1904 or 1905, which he declined to act upon, because he did not consider that the equity in the land justified the expenditures incident to the litigation to annul the sale, and not because he had any doubt of the successful termination of the issue.

The case of Saxlehner v. Eissner et al, 179 U. S. 19 (45 Law Ed. 60) wherein the court was considering laches in an equity proceeding has no application in the case at bar.

The case of Bilafsky v. Abram, 67 N. E. 318, relied upon by the plaintiff in error, we do not consider has any application to the case at bar; because the case then presented had been closed under a misapprehension of facts, whereas the case at bar was closed after the plaintiff in error, his attorney and the referee in bankruptcy, were all cognizant of the

facts, and had within their power the instrumentalities of law to ascertain with slight expense, even the minutest detail incident to the transaction; with the means at their command, and full knowledge of all the salient facts relative to the transaction, they proceeded to close the estate; not because 'here was any doubt in their minds as to the probability of annulling the sale now sought to be annulled, but because at that time they considered there was no equity in the land after the payment of the valid mortgages resting thereon.

The trial Judge held that the re-opening of the bankruptcy, placed it in the same position as if it had never been closed, and therefore overruled the plea of prescription. He did not find, as assumed in the brief of counsel for plaintiff in error; that "he (plaintiff) had been guilty of no such laches as would operate a bar to this action." This is easily accounted for, as counsel who prepared the brief, had no connection with the case until the writ of error herein was applied for, and did not have the opportunity of hearing His Honor's reasons.

This construction might be correct where the order re-opening the case was granted prior to the expiration to the statute of limitation, but not where the full prescriptive period has expired.

A statute of repose, vests the beneficiaries thereof with legal rights as sacred as any conferred by

contract, inheritance or otherwise. The moment the statutory period expired, the plaintiff's alleged right of action expired with it. The law gives the trustee two years after his final account is approved and the estate closed, within which, by proper proceedings, to procure a re-opening of the estate, and among other powers to institute suits, but he is prevented from instituting any suits after that period, except in cases where the operation of the statute of repose has been interrupted.

The right of the defendant in error to defeat this action by prescription was vested in him more than fifteen months prior to the order reopening the bankruptcy. This was a legal right granted him by Congress, the enjoyment thereof being guaranteed by the Constitution.

The Federal Court was powerless to deprive him of this right by an **ex parte** order, of which he had no knowledge, and concerning which he had no opportunity to be heard. If, after an estate has been closed three and one-half years, the court of bankruptcy can by an **ex parte** order re-opening same, brush aside the rights already attached by the statute of limitation, it can do so after the lapse of five years, ten years or even a century. If Congress did not intend that the right to prosecute such actions

should prescribe in two years, what is the effect of the section under discussion?

The construction of the Judge of the District Court renders par. (4), Sec. 11 of the Bankrupt Act inoperative, as there is no limitation of time within which the cause may be re-opened, nor to the number of such orders that may be rendered.

Courts should so interpret a law as to give effect to every portion thereof, and the only interpretation susceptible to render par. (d), Sec. 11, effective, is the one enunciated by the Supreme Court of Louisiana, from which this writ of error is prosecuted. It cannot be presumed that Congress did a vain thing in providing a prescriptive period that could be defeated by so simple a device as the re-opening of the bankruptcy upon an **ex parte** application, after prescription has accrued and the legal rights resulting therefrom had become vested by reason thereof. If a statute of repose does not attach and become effective when the plaintiff declined to prosecute his action because he thought the value of the property did not justify his doing so, when is it effective?

The statement of your predecessors, relative to the object of Congress in obtaining an expeditious en-

forcement of the Bankruptcy Act of 1867, is equally true of the Act of 1898:

> "To prevent this as much as possible, Congress has said to the assignee, you shall commence no suit two years after the cause of action has accrued to you, nor shall you be harassed by suits when the cause of action has accrued more than two years against you. Within that time the estate ought to be nearly settled up and your functions discharged, and we close the door to all litigation not commenced before it has elapsed." Bailey vs. Glover, 21 Wal.; 22 L. Ed. 638.

As the question of fraud by the defendant in error, or a violation of the provisions of the Bankrupt Act, were not passed upon by the Supreme Court of Louisiana, and are not now before Your Honors for decision; we have refrained from discussing the evidence relative thereto, as it is immaterial in presenting the issues raised in plaintiff's assignments of error, whether or not there was a violation of the Bankrupt Laws. We feel satisfied that a fair analysis of the facts, fully exonerates defendant of either an actual or technical breach thereof, and clearly establishes his utmost good faith.

For the foregoing reasons we urge, that there is no merit in any of the assignments of error, as the

judgment rendered by the Supreme Court of the State of Louisiana is strictly in accordance with the law applicable to the facts herein, and the defendant is entitled to a judgment maintaining his plea of prescription.

Very respectfully submitted,

CHARLES A. McCOY,
LELAND H. MOSS,
ROBERT L. KNOX,
Attorneys for Defendant in Error.